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## Fifty Years After the Consumer Credit Protection Act: The High Price of Wage Garnishment

Faith Mullen

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## **FIFTY YEARS AFTER THE CONSUMER CREDIT PROTECTION ACT: THE HIGH PRICE OF WAGE GARNISHMENTS**

Faith Mullen<sup>†</sup>

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## I. INTRODUCTION

Judicially enforced debt collection in Minnesota is almost as old as the state.<sup>1</sup> In 1872, just twelve years after Minnesota entered the union, a creditor sought to collect a debt by using the then-common practice of attaching personal property.<sup>2</sup> The debtor, a man who owned a cigar manufacturing company, possessed a silver watch and chain.<sup>3</sup> He sought to keep it out of the hands of his creditor by asserting that he should be permitted to keep the watch because Minnesota law exempted “all wearing apparel of the debtor and his family.”<sup>4</sup> The debtor also argued that the watch should be kept from the creditor under a provision that exempted “all other household furniture not herein enumerated, not exceeding five hundred dollars in value.”<sup>5</sup> Finally, the debtor claimed that the watch was necessary to his trade as a cigar maker because he used the watch “to keep time of his workmen and regulate his duties.”<sup>6</sup> The Minnesota Supreme Court, however, rejected all the debtor’s arguments and concluded that the watch could not be apparel if it was household furniture, that it could not be household furniture if the debtor wore it, and that the watch was not necessary to the debtor’s trade because:

It is not kept or used for the purpose of carrying on his trade, i.e., to make cigars with, but for his own convenience in keeping the account between himself and those by whom he makes cigars. His workmen could make as many, and as good cigars, if he were to keep their time and “regulate his duties,” whatever that may mean, by the sun.<sup>7</sup>

In the past 150 years, debt collection has evolved from the practice in *Rothschild v. Boelter* of seizing and selling the personal

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1. *Admission of Minnesota Into the Union 1858*, OFF. MINN. SECRETARY ST. STEVE SIMON, <https://www.sos.state.mn.us/about-minnesota/minnesota-government/admission-of-minnesota-into-the-union-1858/> [<https://perma.cc/TGE9-8EEK>] (noting that Congress passed the bill for the admission of Minnesota into the union on May 11, 1858).

2. *Rothschild v. Boelter*, 18 Minn. 361 (1872).

3. *Id.* at 362.

4. *Id.* (quoting MINN. GEN. STAT. ch. 66, § 279(5) (1866), *amended by* Act of Jan. 3, 1899, ch. 267, 1899 Minn. Laws 310)).

5. *Id.* at 363 (quoting MINN. GEN. STAT. ch. 66, § 279(5)).

6. *Id.* at 362.

7. *Id.* at 364; *cf.* Act of Jan. 3, 1899, ch. 267, 1899 Minn. Laws 310 (amending the statute to exempt a watch worn by a debtor).

property of the debtor.<sup>8</sup> Although the remedy of seizing personal property remains in some statutes,<sup>9</sup> the practice has fallen into disfavor—except in cases of repossession, where property is purchased on credit and the property itself secures the debt;<sup>10</sup> and in bankruptcy,<sup>11</sup> where the court apportions the debtor's assets among creditors in satisfaction of a debt.<sup>12</sup> This shift away from seizing a debtor's personal property reflects the practical problems associated with seizing, storing, and selling personal property compared to the relative ease of seizing liquid assets in the form of bank accounts and wages.<sup>13</sup>

Moreover, current attitudes regard the practice of entering a person's home and taking personal property in satisfaction of a debt as a harsh remedy.<sup>14</sup> This practice has been supplanted by the arguably less humiliating,<sup>15</sup> but ultimately more ruinous, practice of seizing wages.<sup>16</sup> Although a late nineteenth-century debtor might

8. Joseph C. Sweeney, *Abolition of Wage Garnishment*, 38 FORDHAM L. REV. 197, 201 (1969) ("In the United States, during the early years of the nineteenth century, there was a consolidation of creditor's remedies into the all-purpose Writ of Execution.").

9. See *In re Hilary*, 76 B.R. 683, 686 (Bankr. D. Minn. 1987) (noting that a debtor unsuccessfully sought to exempt a violin from seizure and sale in a bankruptcy proceeding). Exemptions for personal property have had become somewhat irrelevant outside of bankruptcy cases where they are still occasionally litigated. In those cases, debtors must list property that is not exempted by statute. See *id.*

10. See 68A AM. JUR. 2D *Secured Transactions* § 458 (2018).

11. See 9 AM. JUR. 2D *Bankruptcy* § 631 (2018).

12. See 9A AM. JUR. 2D *Bankruptcy* § 1306 (2018).

13. See Ronald J. Mann, *Strategy and Force in the Liquidation of Secured Debt*, 96 MICH. L. REV. 159, 179 (1997) (describing the "prevailing pessimism" that a lender "could never hope to get paid in full if it repossessed the collateral and sold it in satisfaction of the debt").

14. See ARIZ. REV. STAT. ANN. § 23-755 (West, Westlaw through 2018 Reg. Sess. of the 53rd Leg.) (listing the types of personal property that are exempt from a levy and favoring wage garnishment).

15. In *Rothschild*, the court rejected the debtor's assertion that the court's order was humiliating; "We do not see how (as is suggested by the appellant) there should be a sense of personal degradation and shame imposed upon the debtor by such an order as this, that most creditors would shrink from inflicting; though a debtor who is provided with what *is* exempt by law, might well feel a sense of shame that his unwillingness to apply such exceptional articles of property as these in payment of his debts, should have rendered such an order necessary." *Rothschild v. Boelter*, 18 Minn. 361, 365 (1872).

16. Patricia Benson, *The Implication of a Private Cause of Action under Title III of the Consumer Credit Protection Act*, 47 S. CAL. L. REV. 383, 385 (1974) (observing that

regret the loss of a silver pocket watch and chain, an early twenty-first-century debtor may be compelled to surrender as much as a quarter of his or her income for months—or even years—to satisfy a debt.<sup>17</sup>

State wage garnishment statutes date back to the early twentieth century,<sup>18</sup> but it was not until 1968 that Congress first regulated wage garnishment with the passage of the Consumer Credit Protection Act (CCPA).<sup>19</sup> This law exempts a portion of an employee's wages from garnishment and provides other protections.<sup>20</sup> Since the passage of the CCPA, litigation has resolved some of the uncertainties associated with the law.<sup>21</sup> Additionally, states have enacted legislation that further mitigates some of the harshest effects of wage garnishment.<sup>22</sup>

In 2016, the National Conference of Commissioners on Uniform State Laws<sup>23</sup> proposed a uniform wage garnishment act ("Uniform

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"many consumers maintain[ing] their standard of living only through credit buying" face harm by a single garnishment because it "may destroy their entire payment program, thereby forcing defaults on money owed for other items which may include rent, home mortgages, or care payments" and that "[a]s a consequence of such defaults, the debtor and his family could conceivably lose many of the bare necessities of everyday life").

17. Pub. L. No. 90-321, § 303(a), 82 Stat. 163 (1968) (codified as amended at 15 U.S.C. § 1673(a)(1) (2018)).

18. *E.g.*, Kerry Daniel Marsh, *Wage Garnishment in New York State: Practical Problems of the Employer*, 34 ALB. L. REV. 395, 398 (1970) (noting that in New York, statutes first distinguished between the practice of wage garnishment from attachment in 1903); *id.* ("Similar to early practice elsewhere, attachment and garnishment were nearly indistinguishable until 1903 when the Code of Civil Procedure section 1391 was amended to allow execution against 'any wages, debts, earnings, salary, income from trusts or profits due and owing' to an amount exceeding twenty dollars per week." (quoting Act of Feb. 5, 1903, ch. 461, § 1391, 1903 N.Y. Laws)); Stefan A. Riesenfeld, *Collection of Money Judgments in American Law—a Historical Inventory and a Prospectus*, 42 IOWA L. REV. 155 (1957) ("In the first decade of the twentieth century a garnishee execution was added to reach current wages.").

19. Pub. L. No. 90-321, § 303, 82 Stat. at 163.

20. *Id.*

21. *See, e.g.*, *Marshall v. Safeway, Inc.*, 88 A.3d 735, 738 (Md. 2014) (stating that a Maryland statute was at odds with a federal law that failed to direct the employer to exempt the greater of two amounts).

22. *See, e.g.*, KY. REV. STAT. ANN. § 427.010 (West, Westlaw through 2018 Reg. Sess.); LA. STAT. ANN. 13:3881 (Westlaw through 2018 3d Extraordinary Sess.).

23. *About the ULC*, UNIFORM L. COMMISSION, [http://www.uniformlaws.org/Narrative.aspx?title=About the ULC](http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC) [<https://perma.cc/9269-8NBQ>] (explaining that the Uniform Law Commission "provides states with

Act”) that would standardize garnishment practices nationally.<sup>24</sup> The Uniform Act has its roots in a 2011 proposal from the American Payroll Association (“Association”), which asserted that jurisdictional variations in garnishment practices created the risk of processing errors and financial liability for employers.<sup>25</sup> The Association requested that the National Conference of Commissioners on Uniform State Laws develop a uniform act governing wage garnishments to “alleviate this complexity and enable employers to more easily fulfill their obligations.”<sup>26</sup> Although the Uniform Act would eliminate some complexity in the administration of wage garnishment, especially for employers who process payrolls in more than one state, many of the changes would also eliminate protections that states provide to their citizens—protections that are consistent with the original purpose of the CCPA.<sup>27</sup> The Uniform Act primarily serves the interests of

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non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law”).

24. *Wage Garnishment Act*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Committee.aspx?title=Wage%20Garnishment%20Act> [https://perma.cc/6QXL-A5TD].

25. Letter from Amorette Bryant, Co-Chair, Child Support & Garnishment Subcomm., Am. Payroll Ass’n, Lisa Poole, Co-Chair, Child Support & Garnishment Subcomm., Am. Payroll Ass’n, & William Dunn, Senior Manager, Gov’t Relations, Am. Payroll Ass’n, to Comm. on Scope & Programs, Nat’l Conference of Comm’rs on Unif. State Laws (Dec. 23, 2011), <https://docplayer.net/2531362-American-payrollassociation.html> [https://perma.cc/4NBH-8WAW].

26. *Id.*

27. The congressional findings and declaration of purpose under section 1671 were as follows: “The Congress finds: (1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce. (2) The application of garnishment as a creditors’ remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce. (3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country. (b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.” Pub. L. No. 90-321, § 301(a), 82 Stat. 163 (1968) (codified at 15 U.S.C. § 1671(a) (1968)).

employers and would eliminate some protections for employees.<sup>28</sup> However, as detailed below, the Uniform Act also makes some useful recommendations for improving the wage garnishment process in ways that would benefit both employers and employees.

Someday, society may regard wage garnishment as intrusive and destabilizing, much as society now considers the once-common practice of seizing household goods.<sup>29</sup> But until such time, states can do much to minimize the harm to low-wage workers.<sup>30</sup> This article does not argue, as others have,<sup>31</sup> for the abolition of wage garnishment, but rather for the amendment of state laws to strike a better balance between protecting consumers and enabling the collection of just debts.<sup>32</sup>

28. Memorandum on Consumer Issues from Steven L. Willborn, Reporter for the Unif. Garnishment Act, Unif. Law Comm'n (Dec. 2014) [hereinafter Willborn, Consumer Issues], [http://www.uniformlaws.org/shared/docs/wage%20garnishment/2014dec\\_WGA\\_Consumer%20Issues%20Memo.pdf](http://www.uniformlaws.org/shared/docs/wage%20garnishment/2014dec_WGA_Consumer%20Issues%20Memo.pdf) [https://perma.cc/L83V-6DSN] (reporting the issues that Carolyn Carter, Director of Advocacy for the National Consumer Law Center, raised about the protection of state statutes that would be lost and noting that Carter stated that, "[o]ur basic position was that it would be good to do away with the special categories in the interest of uniformity, while suggesting that State who want greater protections provide them by making the general protections more generous").

29. Cf. Chris Arnold, *Millions of Americans' Wages Seized Over Credit Card and Medical Debt*, NPR (Sept. 15, 2014), <https://www.npr.org/2014/09/15/347957729/when-consumer-debts-go-unpaid-paychecks-can-take-a-big-hit> [https://perma.cc/4YD2-BNJE] (reporting that a fifty-eight-year-old Missouri man's wages were garnished in satisfaction of a \$7,000 credit card debt and that with interest and fees, the debt grew to more than \$15,000 and that 25% of each paycheck was garnished to pay the debt and that although he has paid over \$6,000, he still owes more than \$10,000 due to interest that kept accruing).

30. See George Brunn, *Wage Garnishment in California: A Study and Recommendations* 53 CAL. L. REV. 1214, 1245 (1965), <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2964&context=californialawreview> [http://perma.cc/AG8S-PTQK] (reviewing various ways of formulating a wage garnishment policy and offering legislative proposals for changes in California).

31. See Sweeney, *supra* note 8, at 197 (giving a detailed history of wage garnishment and arguing on moral and economic grounds that it should be abolished).

32. See Brunn, *supra* note 30, at 1215 ("Society has a major stake in the garnishment process, which is not only a creature of law but an activity of government. Society has a legitimate concern that legal debts be paid; society also has a legitimate concern that the collection tools it fashions and whose use it sanctions do not cause undue distress and hardship.").

Fifty years after the passage of the CPPA is an opportune time to consider whether the law has fulfilled its original purpose of protecting consumers.<sup>33</sup> Part II of this article defines wage garnishment, offers an overview of the wage garnishment process, and considers some of the implications of wage garnishment for low-wage workers.<sup>34</sup> Part III revisits the CCPA's original purpose as a consumer protection statute.<sup>35</sup> Part IV explores issues that have emerged in the past fifty years around the implementation of the CCPA and recommends steps that states can take to resolve those issues.<sup>36</sup> These steps include imposing limits on garnish amounts, limiting employer liability, compensating employers for wage garnishment administrative costs, prohibiting firing for garnishment, clarifying the garnishment laws' application to various wage arrangements, administering the distribution of garnished wages, requiring the renewal and preserving the order of garnishments, and retaining state-level consumer protections.<sup>37</sup>

## II. BACKGROUND

Wage garnishment allows a creditor to divert a portion of an employee's wages to the creditor to satisfy a judgment.<sup>38</sup> As defined by federal law, garnishment is "any legal or equitable procedure through which earnings of any individual are required to be withheld for the payment of any debt."<sup>39</sup> As noted by one court, "[a] garnishment proceeding is nothing more than a legal process for obtaining seizure of property of the judgment debtor in the hands of

33. See Helen B. Belsheim, *Wage Garnishment in Nebraska*, 51 NEB. L. REV. 63, 64 (1972) ("Today garnishment is commonly defined as a statutory process by which property, money or credits of the defendant-debtor which are owed to him or held for him by another, the garnishee, are applied to the payment of the debt owed by the defendant-debtor to the plaintiff-creditor." (citing *Begg v. Fite*, 106 S.W.2d 1039, 1042 (1937))).

34. See *infra* Part II.

35. See *infra* Part III.

36. See *infra* Part IV.

37. See *id.*

38. EMP'T STANDARDS ADMIN., U.S. DEP'T. OF LABOR, FACT SHEET #30: THE FEDERAL WAGE GARNISHMENT LAW, CONSUMER CREDIT PROTECTIONS ACT'S TITLE III (CCPA) 1 (2016), <https://www.dol.gov/whd/regs/compliance/whdfs30.pdf> [<https://perma.cc/3T9L-WJ7P>] [hereinafter FACT SHEET #30].

39. Pub L. No. 90-321, tit. III, 82 Stat. 163 (1968) codified at amended at 15 U.S.C. § 1672(c) (2018).



a third party.”<sup>40</sup> This property consists of wages that are owed but unpaid.<sup>41</sup>

To obtain a garnishment, a judgment creditor applies to the court in the jurisdiction where the debtor is employed for an order that will direct an employer to take wages for the payment of the judgment.<sup>42</sup> The practice in Minnesota is typical: The creditor serves the employer (known as the “garnishee”) with a garnishment summons.<sup>43</sup> The summons directs the employer to disclose the employee’s disposable earnings, whether the employee claims any exemptions, and whether there are other known claims against the employee.<sup>44</sup> The employer fills out the Earnings Disclosure Form and Worksheet, which spells out the statutory formula for calculating the amount the employer must withhold from the employee’s wages and surrender to the employee’s creditor.<sup>45</sup>

Different states use different terms to refer to this process of seizing wages, and it is known variously as a garnishment,<sup>46</sup> a lien on wages,<sup>47</sup> an income execution,<sup>48</sup> a suggestee execution,<sup>49</sup> or a withholding order.<sup>50</sup> The Uniform Act calls it a “debt garnishment” to distinguish it from ordered wage deductions, such as child support, bankruptcy orders, fines, taxes, or debts owed to a local, federal, or

40. United States v. Allen Bros. of Homer, Inc., 36 B.R. 920, 923 (M.D. La. 1984).

41. See William D. Hawkland, *Prejudgment Garnishment of Wages after Sniadach*, 75 COM. L.J. 5 (1970) (stating that the remedy of wage garnishment enables a creditor to reach any property of his debtor or any debt owed to his debtor by a third person); see also *Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337, 339–42 (1969) (holding that freezing wages as a prejudgment garnishment violated the due process requirements of the Fourteenth Amendment).

42. See John S. Kiernan, *Wage Garnishment: How It Works & What to Do*, WALLET HUB (July 3, 2015), <https://wallethub.com/edu/wage-garnishment/25902/> [<https://perma.cc/UTF8-DG8C>].

43. MINN. STAT. § 571.72 (2018).

44. *Id.* § 571.74.

45. *Id.* § 571.75.

46. *Id.* § 550.37.

47. N.D. CENT. CODE ANN. § 32-09.1-21 (West, Westlaw through 2017 Reg. Sess. of the 65th Leg. Assembly).

48. N.Y. C.P.L.R. § 5231 (McKinney 2018).

49. W. VA. CODE ANN. § 38-5B-3 (West, Westlaw through 2018 1st Extraordinary Sess.).

50. ALA. CODE §§ 30-3D-501–503 (West, Westlaw through 2018); CAL. CIV. PROC. CODE § 706.051 (West, Westlaw through 2018 Reg. Sess.).

state government.<sup>51</sup> This article uses the term “garnishment” to refer to the post-judgment attachment of wages.

### III. CONSUMER CREDIT PROTECTION ACT

Writing in the same year the CCPA was passed, one scholar observed:

For most wage earners weekly wages are the only asset of any real importance. Where there are neither savings, benevolent friends, nor relatives to fall back on, the loss of garnished wages . . . may well mean eviction on a three-day notice for failure to pay rent, repossession of the car necessary for transportation to the job, arrest for failure to make support payments, or any number of hazards which afflict the man who is unable to meet his obligations when due.<sup>52</sup>

This description illustrates the substantial threat that state wage garnishment laws posed to the financial well-being of low-wage employees before passage of the CCPA.<sup>53</sup> Employees often lost their jobs when their wages were garnished;<sup>54</sup> creditors used the threat of wage garnishment and the associated specter of loss of employment to coerce wage assignments<sup>55</sup> out of employees;<sup>56</sup> and states routinely permitted garnishment before a judgement occurred.<sup>57</sup> When states

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51. UNIF. LAW COMM'N, THE UNIFORM WAGE GARNISHMENT ACT: A SUMMARY 1 (2016) <http://www.uniformlaws.org/shared/docs/wage%20garnishment/UWGA%20-%20Summary.pdf> [<https://perma.cc/YCJ6-2MEU>] [hereinafter A SUMMARY].

52. Mark T. Patterson, *Foreword: Wage Garnishment—An Extraordinary Remedy Run Amuck*, 43 WASH. L. REV. 735, 737 (1968).

53. See Benson, *supra* note 16, at 385.

54. *Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337, 337 (1969).

55. PRACTICAL LAW LABOR & EMP'T, THOMSON REUTERS, WAGE GARNISHMENT UNDER THE CONSUMER CREDIT PROTECTION ACT (CCPA) (2018), Westlaw w-011-6259 (“A wage assignment is an employee’s agreement to allow their employer to turn over a specified amount of the employee’s wages to a creditor.”).

56. Patterson, *supra* note 52, at 738 (“It is widely known that many employers discharge their employees for having garnishments filed against them. For a person employed by a company which considers garnishment a form of misconduct, the pressure is almost unendurable. He must settle quickly or lose his job. This form of coercion rarely comes to light in a court because people working for such employers either pay what the collector asks or file bankruptcy on receipt of a letter threatening garnishment.”).

57. See *Sniadach*, 395 U.S. at 339. At the time, creditors used prejudgment garnishment to prevent a debtor from leaving a jurisdiction even in cases where there

exempted wages from garnishment, those exemptions were often expressed as fixed dollar amounts that were insufficient because they were not adjusted for inflation.<sup>58</sup> In addition, exemptions, if any, left employees with too little to survive.<sup>59</sup>

Although the CCPA did not abolish all of these abuses, it offered consumers two important protections. First, the CCPA capped the amount of weekly wages that could be garnished to the amount by which the employee's wages exceeded thirty times the federal minimum wage,<sup>60</sup> or 25% of an employee's earnings; whichever was less.<sup>61</sup> Second, the CCPA prohibited employers from firing employees for a single instance of wage garnishment.<sup>62</sup>

The CCPA was also designed to address some of the abuses of the then-burgeoning consumer credit industry, particularly "the unnecessary over-extension of credit occasioned by the existence of garnishment as a creditor's remedy."<sup>63</sup> Congress concluded that garnishment of wages is frequently an essential element in predatory extensions of credit<sup>64</sup> and that the resulting "disruption of employment, production, and consumption constitutes a substantial

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was no evidence that that might happen. The Supreme Court ruled that the practice of serving notice of the garnishment and initiating the suit for collection did not provide adequate procedural due process when "in personam jurisdiction was readily obtainable." *Id.*

58. Brunn, *supra* note 30, at 1224 (citing Note, *Garnishment in Kentucky—Some Defects*, 45 Ky. L.J. 322, 329 (1956-57)) ("Some years ago, a writer observed that when the Kentucky statute was first enacted its effect was to grant a one hundred per cent exemption for most employees; at the time he wrote it amounted to about a twenty-five per cent exemption.").

59. *See id.* at 1250-53 (noting the amount of wages exempted from garnishment by states and explaining that in California, Vermont, and Utah, for example, an employee could retain only 50% of his or her wages).

60. Pub. L. No. 95-598, tit. III, § 312(a), 92 Stat. 2676 (1978) (codified as amended at 15 U.S.C. § 1673(a)(2) (2018)).

61. Pub. L. No. 90-321, § 303(a), 82 Stat. 163 (1968) (codified as amended at 15 U.S.C. § 1673(a)(1) (2018)).

62. *Id.* § 304, 82 Stat. at 163 (codified as amended at 15 U.S.C. § 1674(a), (b) (2018)); Benson, *supra* note 16, at 412 (stating that "the purpose of the [CCPA] was to diminish the adverse consequences of the garnishment process and thereby reduce individual and social costs which are generated by diminution of the debtor's ability to provide financial support because of loss of employment and declarations of bankruptcy").

63. Benson, *supra* note 16, at 383.

64. Pub. L. No. 90-321, § 301(a)(1), 82 Stat. 163 (1968) (codified as amended at 15 U.S.C. § 1671(a)(1) (2018)).

burden on interstate commerce.”<sup>65</sup> Thus, although the CCPA did not abolish all of the abuses associated with the wage garnishment system, it created several protections for employees that had not previously existed.

#### IV. IMPROVING WAGE GARNISHMENT FOR LOW-WAGE WORKERS

In the decades following the passage of the CCPA, legislation and litigation focused on making state law consistent with federal law.<sup>66</sup> States made employers liable for some—or in some states, all—of the debt owed by an employee if the employer failed to cooperate with wage garnishment.<sup>67</sup> However, employers have dual, and at times seemingly conflicting, obligations to their employees and to their employees’ creditors.<sup>68</sup> In situations that are novel or ambiguous, it is easy for the employer to be caught between these conflicting duties.<sup>69</sup>

65. *Id.* § 301(a)(2), 82 Stat. at 163.

66. *See generally* Davis v. Paschall, 640 F. Supp. 198, 198–203 (E.D. Ark. 1986) (illustrating that the defendant—a single mother and low-wage worker who was the sole supporter of her children—would have had her wages exempt under federal law).

67. ADP RESEARCH INST., GARNISHMENT: THE UNTOLD STORY 6 (2014), <https://www.adp.com/tools-and-resources/adp-research-institute/insights/~media/RI/pdf/Garnishment-whitepaper.ashx> [<http://perma.cc/4D7R-XA7F>] [hereinafter THE UNTOLD STORY] (“In most states, an employer can become liable to the creditor for the full amount of an employee’s judgment for issues involving noncompliance.”).

68. *See* Big M, Inc. v. Tex. Roadhouse Holding, LLC, 1 A.3d 718, 721 (N.J. Super. Ct. App. Div. 2010) (illustrating a situation in which the employer did not include tips in the calculation of wages that could be garnished and noting that under New Jersey law, the tips were considered to be gratuities and not wages and the employer was obligated to surrender them to the employee and that the creditor objected and sought payment of the employee’s debt from the employer as a penalty for the employer’s failure to cooperate in wage garnishment).

69. THE UNTOLD STORY, *supra* note 67, at 5 (noting that “businesses appear to be caught in the middle, striving to fulfill their obligations to employees under wage payment laws and to creditors under garnishment laws”); Letter from Clarine Nardi Riddle, Conn. Attorney Gen. & Heather J. Wilson, Conn. Assistant Attorney Gen., to Howard B. Brown, Comm’r of Banking (Feb. 26, 1990) (on file at WL 596955) (responding to the question of whether an employer should release the paycheck of an employee who left employment before the conclusion of the automatic twenty-day stay on garnishment and stating that “if the final paycheck of an employee who has terminated employment with the department would normally be issued during the period of automatic stay, you should release the check to the employee”).

Fifty years of experience reveals how states can ensure that the CCPA fulfills its original purpose as a consumer protection statute. The following sections discuss issues that have emerged in connection with wage garnishment and propose changes to state laws that would serve the interests of both employers and employees.

*A. Imposing Limits on How Much Can Be Garnished*

As originally proposed, the CCPA would have abolished wage garnishment.<sup>70</sup> The Senate version, which became law, reflected a compromise between the views that limiting wage garnishment “would solve many of the worst abuses, while abolishment might go too far in protecting the career deadbeat.”<sup>71</sup> Although many states adopted the federal formula for calculating the amount of a wage garnishment,<sup>72</sup> some states excluded higher amounts.<sup>73</sup> Four states have no wage garnishment statute.<sup>74</sup> Others provide different levels

70. See *Consumer Credit Protection Act: Hearing on H.R. 11601 Before the Subcomm. on Consumer Affairs of the H. Comm. on Banking and Currency*, 90th Cong. 766 (1967) [hereinafter *Hearing on H.R. 11601*].

71. *Long Island Tr. Co. v. U.S. Postal Serv.*, 647 F.2d 336, 342 n.8 (2d Cir. 1981) (quoting 114 CONG. REC. 14388 (1968) (statement of Rep. Sullivan)).

72. States that use the federal formula include Alabama, Georgia, Missouri, and Ohio. See ALA. CODE § 6-10-7 (West, Westlaw through Act 2018-579); GA. CODE ANN. § 18-4-5 (West, Westlaw through 2018 Legis. Sess.); MO. ANN. STAT. § 525.030 (West, Westlaw through 2018 2d Reg. Sess. of 99th Gen. Assemb.); OHIO REV. CODE ANN. § 2329.66 (West, Westlaw through File 107 of 132d Gen. Assemb.); ROBERT J. NOBILE, HUMAN RESOURCES GUIDE, § 3:124, Westlaw (2018).

73. Steven L. Willborn, *Indirect Threats to the Wages of Low-Income Workers: Garnishment and Payday Loans*, 45 STETSON L. REV. 35, 39 (2015) [hereinafter Willborn, *Indirect Threats*] (“When the [CCPA] was enacted, it was explicitly viewed in that way—to protect workers, and like other federal statutes, it merely provided a floor of protection, inviting states to provide greater protections. Many states have expanded the protections, but the federal floor is still the most common level of protection at the state level.”).

74. See *Wages Being Garnished by Debt Collectors? Learn Your State's Wage Garnishment Laws*, FAIR-DEBT-COLLECTION.COM, <https://www.fair-debt-collection.com/state-wage-garnishments.html#41> [https://perma.cc/TE3K-J62F].

of exemption based on an employee's status as the head of household.<sup>75</sup> Federal law controls unless state law is more generous.<sup>76</sup>

By exempting thirty times the federal minimum wage, the CCPA was designed to "assure the [employee's] retention of sufficient earnings to maintain a subsistence level for himself and his family"; however, the federal minimum wage has not kept up with inflation, and so the CCPA has failed to keep this promise.<sup>77</sup> Consequently, a wage garnishment can drive the income of a full-time, minimum-wage employee below the federal poverty level.<sup>78</sup> For example, in Nebraska, an employee who works forty hours per week and earns minimum wage would have an annual after-tax income of approximately \$15,800 (based on 2017 tax rates). The allowable weekly wage garnishment would be \$76, leaving an annual income of approximately \$11,900. Wage garnishment would cause this worker's income to drop below the federal poverty level of \$12,140 for a one-person household.<sup>79</sup> The effect is even more pronounced when the household includes family members—the same garnishment for a single parent with two children would drive the household income to 50% of the poverty level.

One scholar observed that "[t]here is no need to force a person into poverty to collect a debt; in fact, from a broader point of view such

75. FLA. STAT. ANN. § 222.11 (West, Westlaw through 2018 2d Reg. Sess. of 25th Leg.); HAW. REV. STAT. ANN. § 652-1(a) (West, Westlaw through 2018 2d Spec. Sess.); MO. ANN. STAT. § 525.030 (West, Westlaw through 2018 2d Reg. Sess. of 99th Gen. Assemb.); NEB. REV. STAT. ANN. § 25-1558 (West, Westlaw through July 1, 2018 2nd Reg. Sess. of 105th Leg.); N.D. CENT. CODE ANN. § 28-25-11 (West, Westlaw through 2017 Reg. Sess. of the 65th Legis. Assemb.); TENN. CODE ANN. § 26-2-107 (West, Westlaw through 2018 2d Reg. Sess. of 110th Gen. Assemb.).

76. Pub. L. No. 90-321, § 307(1), 82 Stat. 164 (1968) (codified as amended at 15 U.S.C. § 1677(1) (2013); see also *Marshall v. Safeway, Inc.*, 88 A.3d 735, 738 (Md. 2014) ("States can provide a greater exemption than that provided by the Federal law, but not a lesser one.").

77. Drew Desilver, *Five Facts About the Minimum Wage*, PEW RES. CTR. (Jan. 4, 2017) <http://www.pewresearch.org/fact-tank/2017/01/04/5-facts-about-the-minimum-wage/> [https://perma.cc/CA5S-4PLT] ("Adjusted for inflation, the federal minimum wage peaked in 1968 at \$8.68 (in 2016 dollars). Since it was last raised in 2009, to the current \$7.25 per hour, the federal minimum has lost about 9.6% of its purchasing power to inflation.").

78. See Annual Update of the HHS Poverty Guidelines, 83 Fed. Reg. 2642-01, 2643 (Jan. 18, 2018).

79. *Id.* (listing the poverty threshold for a family of one in the forty-eight contiguous states as \$12,140).

action is incomprehensible.”<sup>80</sup> Two states, New Jersey and Pennsylvania, have tried to avoid this problem by linking their wage garnishment statutes to the poverty level. In New Jersey, a creditor cannot take more than 10% of a debtor’s wages unless the debtor’s income exceeds 250% of the poverty level based on household size.<sup>81</sup> Applying the 2018 poverty level for a household of three, this would mean that a debtor who earns less than \$52,000 would have only 10% of his or her wages garnished.<sup>82</sup> Pennsylvania offers even greater protections for debtors. It allows garnishment only for debts arising out of a residential lease and only for 10% of wages, provided the garnishment does not “place the debtor’s net income below the poverty income guidelines.”<sup>83</sup>

Wage garnishment can be ruinous, even for wage earners whose wages do not dip below the federal poverty level as a result of garnishment.<sup>84</sup> One scholar observed that “[t]he focus of all of these garnishments is not on the very poorest of the poor . . . . Instead, the focus is precisely on a group that is struggling to maintain a stable and decent life.”<sup>85</sup> A 2017 study that examined the scope of wage garnishment—by analyzing a data set that included approximately 12 million employees—revealed that early middle-aged, middle-class employees are most affected by wage garnishment.<sup>86</sup> The study

80. C. Kenneth Grosse & Charles W. Lean, *Wage Garnishment in Washington—An Empirical Study*, 43 WASH. L. REV. 743, 786 (1968).

81. N.J. STAT. ANN. § 2A:17-56 (West, Westlaw through 2018).

82. Annual Update of the HHS Poverty Guidelines, 83 Fed. Reg. at 2643 (listing the poverty threshold for a family of three in the forty-eight contiguous states as \$20,780). Thus, for a family of three, 250% of the poverty rate equals \$51,950. *See id.*

83. 42 PA. STAT. AND CONS. STAT. ANN. § 8127(a)(3.1) (West, Westlaw through 2018 Reg. Sess.)

84. Peter V. Letsou, *The Political Economy of Consumer Credit Regulation*, 44 EMORY L.J. 587, 602 (1995) (“Like the lender’s seizure of personal property owned by the borrower, the exercise by a lender of its rights under a wage assignment or the procurement by a lender of a garnishment order can often result in greater harms to the borrower than benefits to the lender.”).

85. *See* Willborn, *Indirect Threats*, *supra* note 73, at 38.

86. *See* ADP RESEARCH INST., THE U.S. WAGE GARNISHMENT LANDSCAPE: THROUGH THE LENS OF THE EMPLOYER 5 (2017) [hereinafter LANDSCAPE], [https://www.adp.com/tools-and-resources/adp-research-institute/research-and-trends/-/media/RI/pdf/WageGarnishment\\_WhitePaper.ashx](https://www.adp.com/tools-and-resources/adp-research-institute/research-and-trends/-/media/RI/pdf/WageGarnishment_WhitePaper.ashx) [https://perma.cc/6C99-JFBR].

showed that almost 3% of employees had “general garnishments.”<sup>87</sup> Additionally, the study reported: “The garnishment rate and average number of garnishments seems to be having a disproportionate impact on workers (ages 35 to 44 years), who earn between \$20,000 and \$60,000. A likely reason? This is typically the age range for peak individual debt load and can result in wage garnishment situations.”<sup>88</sup>

As the Uniform Law Commission noted, “using the minimum wage as the metric for determining the exemption amount means that the exemption varies greatly over time in real terms.”<sup>89</sup> The commission explained that “the amount protected from garnishment in 2006 was only 55% of the amount protected in 1968.”<sup>90</sup> One way to temper this result is for states to use their own minimum wage to calculate the exemption.<sup>91</sup> The federal minimum wage is currently \$7.25 per hour.<sup>92</sup> Twenty-nine states have a higher minimum wage, ranging from \$8.25 in Delaware, Florida, Illinois, and Nevada, to \$13.25 in the District of Columbia.<sup>93</sup> Some states use these higher minimum wages to calculate wage garnishment, while others continue to use the federal minimum wage.<sup>94</sup> Using the state minimum wage brings the state’s wage garnishment laws in line with the amount that the state legislature has determined to be a fair wage for a state’s lowest-paid workers and may reduce the number of families living in poverty.<sup>95</sup>

87. See *id.* at 7 (distinguishing “general garnishments” from garnishments for child support, tax levy, and bankruptcy).

88. *Id.* at 15.

89. Memorandum from Steve L. Willborn, Reporter for the Unif. Garnishment Act, on General Issues for Discussion to Drafting Comm., Unif. Law Comm’n 2 (Feb. 14, 2014)

[hereinafter Willborn Memorandum], [http://www.uniformlaws.org/shared/docs/wage%20garnishment/2014mar\\_WGA\\_Mtg%20Issues%20Memo\\_2014-feb-14.pdf](http://www.uniformlaws.org/shared/docs/wage%20garnishment/2014mar_WGA_Mtg%20Issues%20Memo_2014-feb-14.pdf)

[<https://perma.cc/8SLG-ZVD5>].

90. *Id.*

91. *Id.* at 3.

92. WAGE & HOUR DIV., U.S. DEP’T OF LABOR, CONSOLIDATED MINIMUM WAGE TABLE (2018), <https://www.dol.gov/whd/minwage/mw-consolidated.htm> [<https://perma.cc/3QBQ-HLJV>].

93. *Id.*

94. Willborn, *Indirect Threats*, *supra* note 73, at 3.

95. See ARINDRAJIT DUBE, MINIMUM WAGES AND THE DISTRIBUTION OF FAMILY INCOME, Abstract 2–3 (2017), <http://ftp.iza.org/dp10572.pdf> [<https://perma.cc/9MGY-F8GG>] (stating that “higher minimum wages shift down the cumulative distribution



The Uniform Act provides that “states, as they do today, will vary with regard to the extent to which wages are exempt.”<sup>96</sup> The drafters of the Uniform Act urge states that want greater protections for employees to provide them “by making general protections more generous.”<sup>97</sup> Several states—Virginia,<sup>98</sup> North Dakota,<sup>99</sup> Minnesota,<sup>100</sup> and New Mexico<sup>101</sup>—have already increased the amount exempt from garnishment from thirty to forty times the minimum wage. West Virginia,<sup>102</sup> Massachusetts,<sup>103</sup> Nevada,<sup>104</sup> and New Hampshire<sup>105</sup> exempt fifty times the federal minimum wage. Maryland has legislation pending that would exempt eighty times the federal minimum hourly wage from garnishment.<sup>106</sup> Some states couple a higher multiplier with a lower percentage limit. Creditors in Massachusetts, for example, may garnish a maximum of 15% of an employee’s wages.<sup>107</sup> New Jersey, New York, and Pennsylvania are among the states that limit garnishment to 10% of wages.<sup>108</sup>

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of family incomes at the bottom, reducing the share of non-elderly individuals with incomes below 50, 75, 100 and 125 percent of the federal poverty threshold”).

96. Memorandum from the Unif. Law Comm’n to Floor, 2015 Annual Meeting of Unif. Law Comm’n (2015) [hereinafter ULC Memorandum], [http://www.uniformlaw.org/shared/docs/wage%20garnishment/2015AM\\_WageGarnishment\\_IssuesMemo.pdf](http://www.uniformlaw.org/shared/docs/wage%20garnishment/2015AM_WageGarnishment_IssuesMemo.pdf) [https://perma.cc/M96W-9MTF].

97. Willborn, Consumer Issues, *supra* note 28.

98. VA. CODE ANN. § 34-29(a)(2) (West, Westlaw through 2018 Reg. Sess. and 2018 Spec. Sess. I).

99. N.D. CENT. CODE ANN. § 32-09.1-03 (West, Westlaw through 2017 Reg. Sess. of the 65th Legis. Assemb.).

100. MINN. STAT. § 571.922(2) (2018).

101. N.M. STAT. ANN. § 35-12-7(a)(2) (West, Westlaw through 2d Reg. Sess. of the 53rd Legis. (2018)).

102. W. VA. CODE ANN. § 46A-2-130(2)(b) (West, Westlaw through 2018 1st Extraordinary Sess.).

103. MASS. GEN. LAWS ANN. ch. 246, § 28 (West, Westlaw through 2018 Ann. Sess.).

104. NEV. REV. STAT. ANN. § 31.295(2)(c) (West, Westlaw through 2017 79th Reg. Sess.).

105. N.H. REV. STAT. ANN. § 512:21(II) (West, Westlaw through 2018 Reg. Sess.).

106. S.B. 22, 2018 Leg., 438th Sess. (Md. 2018).

107. MASS. GEN. LAWS ANN. ch. 246, § 28.

108. N.J. STAT. ANN. § 2A:17-56(a) (West, Westlaw through 2018); N.Y. C.P.L.R. § 5205(d)(1) (McKinney 2018); PA. STAT. AND CONS. STAT. ANN. § 8127(a)(3.1) (West, Westlaw through 2018 Reg. Sess.).

States should reconsider whether permitting a creditor to garnish thirty times the federal minimum wage is sound policy.<sup>109</sup> “Focusing on the minimum wage ignores the critical distinction between what workers earn for their economic contributions and what families require for basic living standards.”<sup>110</sup> The National Consumer Law Center recommends limiting wage garnishment to 10% of an individual’s disposable earnings for a workweek, or to the amount that disposable earnings for a workweek exceed sixty times the applicable minimum wage—whichever is less.<sup>111</sup> Additionally, “[b]y protecting 90% of the worker’s wages or 60 times the minimum wage, the state will reduce the harm that wage garnishment causes to struggling families.”<sup>112</sup> Increasing the exemptions from wage garnishment would reduce the total number of garnishments, lead to lower costs for employers, and provide greater economic security for employees:<sup>113</sup>

Employees and employers obviously do benefit when garnishments are few or nonexistent . . . . As an example, employees with no garnishments, on an average, are clearly earning thousands of dollars more each year than their colleagues who are carrying a garnishment. Employers, in turn, are benefiting from a lighter administrative burden and having fewer workers who are stressed, humiliated, and distracted because they are taking home a garnished paycheck.<sup>114</sup>

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109. Sweeney, *supra* note 8, at 203 (“In an inflationary economy it is estimated that the average wage earner needs from 85 to 90% of his salary just to meet current expenses.”); see DEL. CODE ANN. tit. 10, § 4913 (West, Westlaw through 81 Laws 2018) (showing that Delaware exempts 85% from garnishment); 735 ILL. COMP. STAT. ANN. 5/12-803(e) (West, Westlaw through 2018 Reg. Sess.) (showing that Illinois exempts 85% from garnishment); N.Y. C.P.L.R. § 5205 (McKinney 2018) (showing that New York exempts 90% from garnishment).

110. Robert I. Lerman, *Why Focus on the Minimum Wage?*, URB. INST. (Mar. 8, 2013), <https://www.urban.org/urban-wire/why-focus-minimum-wage> [<https://perma.cc/W8BT-ECUW>].

111. CAROLYN L. CARTER, MODEL CONSUMER AMENDMENTS TO UNIFORM WAGE GARNISHMENT ACT 1 (2017), [https://www.nclc.org/images/pdf/legislation/model\\_laws/model-amendments-ulc-wga-02142017.pdf](https://www.nclc.org/images/pdf/legislation/model_laws/model-amendments-ulc-wga-02142017.pdf) [<https://perma.cc/7XKR-YKNG>].

112. *Id.*

113. See LANDSCAPE, *supra* note 86, at 4.

114. *When an Employee’s Wages are Garnished, Their Company also Pays the Price*, ADP RES. INST., <https://www.adp.com/resources/articles-and->

### B. *Limiting Employer Liability*

In essence, garnishment is a legal proceeding between the creditor and the employer. A Missouri court characterized it as:

[A] special, summary, and inquisitorial proceeding, affording a harsh and extraordinary remedy. It is an anomaly; a statutory invention sui generis, with no affinity to any action known to the common law. It closely approximates an action by plaintiff against the garnishee . . . . It is an adversary proceeding between plaintiff and garnishee or at least may develop into such a proceeding.<sup>115</sup>

In short, garnishment draws employers into legal disputes not of their own making.<sup>116</sup>

The garnishment process depends on the cooperation of employers and the stakes are high for employers who fail to cooperate.<sup>117</sup> Wage garnishment laws create obligations and attendant liability for the employer to both the employee and the employee's creditor.<sup>118</sup> If the employer fails to withhold the correct amount, the employer can be held in contempt, in addition to

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insights/articles/w/when-an-employees-wages-are-garnished-their-company-also-pays-a-price.aspx [https://perma.cc/H3B7-PK96] [hereinafter *Employee's Wages*].

115. *Clarkin v. Worthley*, 114 F. Supp. 877, 878–79 (W.D. Mo. 1953) (quoting 38 C.J.S. *Garnishment* § 2).

116. *See, e.g., Anani v. Griep*, 406 S.W.3d 479, 481 (Mo. Ct. App. 2013). A Missouri statute allowed a 90% exemption garnishment for the “head of family.” *Id.* at 480. The employee asserted a right to this exemption, and the employer garnished 10% of the employee's wages. *Id.* at 481. The creditor then sued the employer. The court, ruling in the employer's favor, concluded that the statute did not require the employee to file a verified request for the exemption or the employer the obligation to demand it. *Id.* at 483.

117. *Landahl, Brown & Weed Assocs., Inc. v. Houston*, 404 A.2d 934, 935 (D.C. 1979) (“The garnishee is not a party to the judgment and acts at his peril if he withholds too much or too little.”).

118. *See, e.g., Fidelity Fin. Servs., Inc. v. Hill*, 580 N.E.2d 333, 334 (Ind. Ct. App. 1991). The employer believed the debtor had filed for bankruptcy and attached a copy of the bankruptcy petition to the answer to the interrogatories. *Id.* In fact, the bankruptcy petition had been discharged. *Id.* The trial court concluded that the employer had a good-faith belief that a bankruptcy court had stayed garnishments. *Id.* The creditor produced evidence that the bankruptcy had been discharged at a hearing the employer did not attend. *Id.* The court of appeals reversed the trial court's decision and concluded that the employer was liable for more than one year's worth of payments. *Id.*

incurring liability to the creditor.<sup>119</sup> On the other hand, if the employer improperly withholds wages from the employee, then the employer may face sanctions under wage and hour laws.<sup>120</sup>

States prescribe a period for employers to respond to interrogatories and the failure file a timely response can result in liability.<sup>121</sup> The Arizona statute is typical: “If the garnishee fails to appear or file and serve the answer after the service of the order requiring the appearance in person or answer on the garnishee, the court may render judgment by default against the garnishee for the full amount of the judgment against the judgment debtor.”<sup>122</sup> Some states make the employer liable only for the portion of the debt that equals the wages currently owed to the employee rather than the entire debt.<sup>123</sup> But, as one court observed, “the practical result of the limitation . . . is to eliminate any incentive for a garnishee to file an answer or make a timely response to a writ of garnishment.”<sup>124</sup>

In addition to liability for the employee’s debt, employers may be held in contempt<sup>125</sup> or face criminal penalties if they fail to comply with wage garnishment laws.<sup>126</sup> New Mexico makes it unlawful for the

119. See *Oak Hill Banks v. Ison*, No. 03CA5, 2003 WL 22386806, at \*7 (Ohio Ct. App. Oct. 15, 2003) (holding that the trial court abused its discretion when it held an employer in criminal contempt and sentenced him to thirty days in jail for his failure to provide evidence about an employee’s wages).

120. See *Marshall v. Safeway, Inc.*, 88 A.3d 735, 736 (2014) (holding that an employee has a right to sue an employer for unpaid wages when wages have been incorrectly turned over to a third party under the Maryland Wage Payment and Collection Law).

121. *Employee’s Wages*, *supra* note 114, at 4 (“In some jurisdictions, the employer can even be held liable for the full amount of an employee’s judgment.”).

122. ARIZ. STAT. ANN. § 12-1598.13(H) (West, Westlaw through 1st Spec. and 2d Reg. Sess. of the 53d Legis. 2018).

123. MICH. COMP. LAWS ANN. § 600.4012(2), (10)(a), (10)(b)(i), (11) (West, Westlaw through 2018 Reg. Sess. 99th Mich. Leg.) (noting the limitations on employer liability and stating that if the employer fails to pay within 21 days, the employer is liable only for “the amount as would have been withheld if the garnishment had been in effect for 56 days”).

124. *Wal-Mart Stores, Inc. v. D.A.N. Joint Venture III, L.P.*, 288 S.W.3d 627, 633 (Ark. 2008).

125. GA. CODE ANN. § 18-4-110 (West, Westlaw through 2018 Legis. Sess.) (recognizing that in Georgia, an employer who fails to follow garnishment procedure may be subject to contempt).

126. 735 ILL. STAT. ANN. 5/12-818 (West, Westlaw through 2018 Reg. Sess.) (showing that in Illinois, an employer who fires an employee because of a

employer to deliver pay to the debtor after service of the garnishment, and an employer who fails to comply with an order to deliver the debtor's earnings to the sheriff can be held in contempt.<sup>127</sup>

Furthermore, employers may face additional costs associated with litigation to resolve uncertainties.<sup>128</sup> For example, Mississippi law provides detailed procedures for situations in which the creditor doubts the veracity of the garnishee's response; however, if the creditor is mistaken, the employer may "have judgement for costs against the plaintiff."<sup>129</sup>

Some states impose additional obligations on the employer beyond responding to interrogatories and withholding wages. In those states, the employer's obligation does not end when the employee leaves. For example, in Oklahoma, when an individual who is subject to a wage garnishment leaves a job, the employer must provide the person or agency designated to receive payments with the employee's last known address and the new employer's name within ten days.<sup>130</sup> Failure to do so can obligate the employer to pay the amount that was due when the employer received the garnishment.<sup>131</sup> In many states, the obligation to garnish wages is revived if an employee who leaves a job is reemployed within ninety days by the same employer.<sup>132</sup>

Some states have exemptions based on the employee's family size and impose a duty on the employer to verify the exemptions.<sup>133</sup> If

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garnishment may be guilty of a misdemeanor and that discharge or suspension of employee because of a garnishment is prohibited).

127. N.M. STAT. ANN. § 35-12-7 (West, Westlaw through 2018 2d Reg. Sess. of the 53rd Legis.).

128. See N.M. STAT. ANN. § 35-12-16 (West, Westlaw through 2018 2d Reg. Sess. of the 53rd Legis.) (recognizing the potential for litigation and stating that an employer who provides answers as required by law, but is sued, is entitled actual costs and reasonable attorney fees).

129. MISS. CODE. ANN. § 11-35-45 (West, Westlaw through 2018 Reg. and 1st Extraordinary Sess.) (noting that if the creditor is mistaken, however, the employer can recover costs against the creditor and stating that "but if the answer be found correct, the garnishee shall have judgment for costs against the plaintiff").

130. OKLA. STAT. ANN. tit. 12, § 1171.3 (West, Westlaw through 2018 2d Reg. Sess. of the 56th Legis.).

131. *Id.*

132. See MD. CODE ANN., COM. LAW § 15-604 (West, Westlaw through 2018 Reg. Sess.); N.Y. C.P.L.R. § 5231 (McKinney 1962).

133. See, e.g., N.D. CENT. CODE ANN. § 32-09.1-03 (West, Westlaw through 2017 Reg. Sess. of the 65th Assemb.).

the creditor doubts the employer's answer to a writ of garnishment, the creditor has standing to sue the employer. Occasionally, employers find themselves litigating ambiguous provisions of state law.<sup>134</sup> For example, in *Anani v. Griep*, the Missouri Court of Appeals addressed the state's definition of "head of family," which qualifies a debtor to exempt 90% of their income from garnishment.<sup>135</sup> The court concluded that employers in that state are "not required to obtain written verification of such exemption," and thus the employer properly withheld 10% of the debtor's wages, rather than 25% called for in the writ of garnishment.<sup>136</sup>

The Uniform Act would reduce the sanctions on employers who fail to cooperate with wage garnishments.<sup>137</sup> Rather than making the employer liable for all or part of the debt owed by the employee, or imposing criminal penalties, the act would impose fines ranging from \$5 to \$20 per day.<sup>138</sup> The total fines would never exceed the amount owed to the creditor.<sup>139</sup> The employer would have twenty-two days to respond to the garnishment action<sup>140</sup> and additional time to come into compliance after the creditor filed a motion with the court specifying the nature of the employer's failure.<sup>141</sup> The Uniform Act provides a balance between encouraging employers to comply with the law and sanctioning those who fail to do so. The act reduces the employer's liability and may make employers less concerned about honest mistakes.<sup>142</sup>

134. See *Anani v. Griep*, 406 S.W.3d 479, 482 (Mo. Ct. App. 2013) (holding that an employer was not required "to obtain written verification of head of family exemption").

135. MO. ANN. STAT. § 525.030 (West, Westlaw through 2018 2d Reg. Sess.).

136. *Anani*, 406 S.W.3d at 481–82.

137. UNIF. WAGE GARNISHMENT ACT § 15 (UNIF. LAW COMM'N, Proposed Official Draft 2016).

138. *Id.* § 16.

139. *Id.* § 16(7) ("The maximum amount paid by a garnishee under this section may not exceed the total amount owed by the debtor in the garnishment action.").

140. *Id.* § 15(a)(3)(B).

141. *Id.* § 15(a)(1).

142. Cf. *Fidelity Financial Services, Inc. v. Hill*, 580 N.E.2d 333, 334 (Ind. Ct. App. 1991) (noting that the court concluded that the employer was ultimately liable for more than one year's payments after making an honest mistake).

*C. Compensating Employers for the Cost of Wage Garnishment*

In even the most routine wage garnishment, employers incur costs in calculating the correct amount of the garnishment, completing detailed court forms, providing notice to the employee, and withholding wages.<sup>143</sup> A 1997 study of the U.S. Navy calculated that the average cost to the Navy of lost productivity per wage garnishment was \$93.36.<sup>144</sup> Federal law does not provide compensation for employers in connection with wage garnishment.<sup>145</sup> To the extent that states compensate employers for the costs of garnishment, the compensation is modest. Some states allow employers to withhold a fixed dollar amount from each check sent to the creditor—\$1 per check in Maine, \$2 in Georgia, \$3 in Alabama,<sup>146</sup> and \$3 in Louisiana—in compensation for the “costs of the employer in complying with the judgment of garnishment.”<sup>147</sup>

Even in states with the most generous compensation to employers, the allowable fees do not cover the costs associated with garnishment. In Missouri, the employer “may deduct a one-time sum not to exceed twenty dollars, or the fee previously agreed upon

143. *Hearing on H.R. 11601, supra* note 70 (noting that a 1964 survey conducted by the Cook County Credit Bureau found that processing a single garnishment order cost a company between \$15 and \$35).

144. Raminder K. Luther et al., *The Employer's Cost for the Personal Financial Management Difficulties of Workers: Evidence from the U.S. Navy*, 2 PERS. FIN. & WORKER PRODUCTIVITY 175, 181 (1998).

145. See Adam C. Uzialko, *Wage Garnishment: What Employers Need to Know*, BUS. NEWS DAILY (May 22, 2018, 7:00 AM), <https://www.businessnewsdaily.com/10813-wage-garnishments-employer-obligations.html> [<https://perma.cc/VR5Z-NUUL>].

146. ALA. CODE § 6-6-462 (West, Westlaw through Act 2018-579) (providing that in Alabama, the employer is reimbursed \$3 for attending a hearing and stating that “[w]hen the answer of the garnishee is not controverted or, if controverted, is found for him, he shall be allowed \$3 per day during his attendance when such attendance is required, together with five cents per mile, computed according to the usual route traveled, going to and returning from court; and, when the personal attendance of said garnishee is not required, he shall be allowed \$3 for such answer, which shall be taxed and collected as other costs”); ME. REV. STAT. ANN. tit. 14, § 3127-B(4) (West, Westlaw through 2017 2d Reg. Sess. of the 128th Legis.) (stating that “[a]n employer or other payor subject to a withholding order may charge a fee of \$1 per check issued and forwarded to the judgment creditor”).

147. LA. STAT. ANN. § 13:3921(C) (West, Westlaw through 2018 3d Extraordinary Sess.) (stating that “the judgment for a processing fee of three dollars to be deducted by the employer from the nonexempt income of the employee for each pay period during which the judgment of garnishment is in effect”).

between the garnishee and judgment debtor . . . for his or her trouble and expenses in answering the interrogatories and withholding the funds.”<sup>148</sup> In North Dakota, the creditor must pay the employer \$25 when the summons is served as a fee for making the “affidavit of disclosure.”<sup>149</sup>

Other states compensate the employer with a percentage of the debt. New Jersey allows the employer to retain 5% of the amount being garnished “for expense and services,” and the creditor bears this cost.<sup>150</sup> Indiana provides employers with the greater of \$12 or 3% of the garnishment, with half of the cost coming out of the employee’s disposable earnings and the other half from the amount due the creditor.<sup>151</sup> The Uniform Act suggests a one-time, up-front fee, but acknowledges that states may wish to retain their own fee structures.<sup>152</sup> The Uniform Act provides a sample form for states to use.<sup>153</sup> Providing reasonable compensation to employers and

148. MO. REV. STAT. § 525.230 (West, Westlaw through 2018 Reg. Sess. of the 99th Gen. Assemb.) (providing that “[t]he garnishee may deduct a one-time sum not to exceed twenty dollars, or the fee previously agreed upon between the garnishee and judgment debtor where and if the garnishee is a financial institution . . . in addition to the moneys withheld to satisfy the court-ordered judgment” and that “[t]he garnishee may file a motion with the court for additional costs, including attorney’s fees, reasonably incurred in answering the interrogatories in which case the court may make such award as it deems reasonable”).

149. N.D. CENT. CODE § 32-09.1-10 (West, Westlaw through 2017 Reg. Sess. of the 65th Legis. Assemb.) (“In all garnishment proceedings, the plaintiff, when the garnishee summons is served upon the garnishee, shall tender to the garnishee the sum of twenty-five dollars as the fee for making an affidavit of disclosure.”).

150. N.J. REV. STAT. § 2A:17-53 (West, Westlaw through 2018) (withholding “5%, which amount shall be on account of compensation to such person, agent, treasurer or other fiduciary officer, for expense and services in payment of the execution, deductible from each payment made, until such execution shall be wholly satisfied”).

151. IND. CODE. § 24-4.5-5-105 (5) (West, Westlaw through 2018 2d Reg. Sess.) (providing that “[a]n employer who is required to make deductions from an individual’s disposable earnings pursuant to a garnishment order or series of orders arising out of the same judgment debt . . . may collect, as a fee to compensate the employer for making these deductions, an amount equal to the greater of twelve dollars (\$12) or three percent (3%) of the total amount required to be deducted by the garnishment order or series of orders arising out of the same judgment debt”).

152. UNIF. WAGE GARNISHMENT ACT § 5 legislative note (UNIF. LAW COMM’N, Proposed Official Draft 2016) (stating that the “[t]hree possibilities are (1) both an up-front and a per-payment fee, (2) a per-payment fee only and (3) no fee”).

153. *Id.* app. B (providing the “Form to Commence Garnishment”).



clarifying the fee structure would benefit employers, employees, and creditors alike.

Some states anticipate that employers may be drawn into litigation and make provisions to reimburse employers for this cost. In New Mexico, if the employer prevails in litigation, the employer is entitled to actual costs and reasonable attorney's fees.<sup>154</sup> In Mississippi, the employer "shall be allowed for his attendance[,] . . . the pay and mileage of a juror, and, in exceptional cases rendering it proper, the court may allow the garnishee reasonable compensation."<sup>155</sup> But even when employers prevail in litigation, they still incur costs both in terms of dollars and time.<sup>156</sup> The Uniform Act provides sanctions for creditors who act in bad faith, including payment of attorney's fees to both the employer and the employee.<sup>157</sup>

The Uniform Act does not address those collateral costs to employers that are harder to quantify and harder to compensate.<sup>158</sup> For instance, wage garnishment can engender hostility from an employee who wrongly blames the employer for the reduction in pay or who considers the employer's cooperation a betrayal.<sup>159</sup> Employers may fear a decrease in efficiency from employees who receive less than their full wages.<sup>160</sup> Wage garnishment can also give rise to concerns about the employee's character.<sup>161</sup> Finally, when wage

154. N.M. STAT. ANN. § 35-12-16(B) (West, Westlaw through 2018 2d Reg. Sess. of the 53rd Legis.) ("If the garnishee answers as required by law, the court shall award the garnishee his actual costs and a reasonable attorney fee.").

155. MISS. CODE. ANN. § 11-35-61 (West, Westlaw through 2018 Reg. and 1st Extraordinary Sess.).

156. See, e.g., *DeSoto, Inc. v. Crow*, 520 S.W.2d 307, 308 (Ark. 1975) (holding that "the garnishee is entitled to twenty (20) days notice").

157. UNIF. WAGE GARNISHMENT ACT § 17 (UNIF. LAW COMM'N, Proposed Official Draft 2016).

158. See *id.* § 5.

159. Cecilia M. Martaus, *Garnishment of Employee Wages in Ohio: Whose Money Is It Anyway?* 18 OHIO N.U. L. REV. 197, 197 (1991) (stating that "[i]t is part of the American work ethic for an employee to receive an honest day's pay for an honest day's work" and that "[i]t is not surprising, therefore, that feelings run high when an employee receives a significantly diminished paycheck due to involuntary deductions paid over to third parties").

160. *Johnson v. Pike Corp. of America*, 332 F. Supp. 490, 495 (C.D. Cal. 1971) (arguing that "garnishments result in a loss of efficiency on behalf of the employee whose wages have been garnisheed").

161. William T. Kerr, *Wage Garnishment Should Be Prohibited*, 2 PROSPECTUS 371, 376 (1969) <http://www.clrc.ca.gov/pub/1972/M72-02s3.pdf>

garnishment drives an employee out of a job, the employer bears the cost associated with hiring and training a new employee.<sup>162</sup>

Thus, there is a risk that despite good intentions, the employer will end up losing money. In some instances, an employer acting in good faith will make a mistake and owe money to either the creditor or the employee.<sup>163</sup> In other instances, the employer will incur costs as a result of the secondary effects of wage garnishment.

#### D. *Extending the Prohibition on Firing for Garnishment*

In view of the paperwork, costs, and potential civil and criminal liability, it is not surprising that employers are loath to be drawn into these disputes.<sup>164</sup> Additionally, employers may be concerned that their employee's personal financial problems may result in absenteeism, reduced productivity, theft, or the loss of security clearance.<sup>165</sup> Garnishments, particularly multiple garnishments, may provide the employer with an incentive to fire the employee.<sup>166</sup>

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[<https://perma.cc/H4JH-N79P>] (quoting an employer referring to garnished employees: "These people in a lot of cases don't seem to try to do better even with counseling, help, advice and threats. These people use very poor judgment. Make the same mistakes over and over.").

162. See Arindrajit Dube et al., *Employee Replacement Costs 2* (Inst. for Research on Labor & Emp't, Working Paper No. 201-10, 2010), <http://irle.berkeley.edu/workingpapers/201-10.pdf> [<https://perma.cc/4R7Q-5SN2>] ("The costs of replacing a worker can be substantial.").

163. See *May v. Bob Hankins Distrib. Co.*, 785 S.W.2d 23, 24 (Ark. 1990) (holding that the court below properly entered default judgments when the corporation failed to answer writs).

164. Kerr, *supra* note 161, at 381. ("It is not difficult to understand why employers have adopted reasonably strict attitudes toward employees whose wages have been garnished. Garnishment of an employee's wage is costly, inconvenient and indicative of a degree of financial irresponsibility that may both reflect upon the reputation of the company and suggest that the employee involved will be less productive or less capable than he was before garnishment.").

165. E. Thomas Garman et al., *The Negative Impact of Employee Poor Personal Financial Behaviors on Employers*, 7 FIN. COUNSELING & PLAN. 157, 159 (1996), [https://www.researchgate.net/publication/253429682\\_The\\_Negative\\_Impact\\_Of\\_Employee\\_Poor\\_Personal\\_Financial\\_Behaviors\\_On\\_Employers](https://www.researchgate.net/publication/253429682_The_Negative_Impact_Of_Employee_Poor_Personal_Financial_Behaviors_On_Employers) [<https://perma.cc/8298-6SKW>]; Flora L. Williams et al., *Financial Concerns and Productivity*, 7 FIN. COUNSELING & PLAN. 147, 149 (1996), [https://www.researchgate.net/publication/241526128\\_Financial\\_Concerns\\_And\\_Productivity](https://www.researchgate.net/publication/241526128_Financial_Concerns_And_Productivity) [<https://perma.cc/GF27-KB69>].

166. Benson, *supra* note 16, at 386-87. ("The reasons underlying an employer's decision to fire a garnished employee are not complex. First, expenses borne by the

Although federal law prohibits firing an employee for one garnishment,<sup>167</sup> it does not give the employee a private cause of action to enforce that right.<sup>168</sup>

When an employee loses his job due to wage garnishment, the loss of employment may upset the employee's already precarious financial situation, making it impossible to pay debts, triggering more judgments, and ultimately, more garnishments:

When loss of employment ensues, the debtor's troubles have probably just begun. The likelihood that the debtor will be able to pay the debt which was subject to garnishment or his other outstanding obligations is minimal. Loss of employment, in most instances, curtails the debtor's ability to support himself and his family. The debtor will find it difficult to obtain new employment since an employer will not be desirous of hiring someone who has been previously discharged because of garnishment difficulties. Furthermore, reemployment is not a panacea for the debtor's financial problems. It does not immunize him from garnishment and creditors can follow him to his new place of employment and begin the collection process again. Even if the debtor is successful in holding his job despite the garnishment, his chance for advancement may be impaired.<sup>169</sup>

The CCPA requires that "an employer may not discharge an employee on the ground that his earnings have been subjected to garnishment for any 'one indebtedness.'"<sup>170</sup> Although federal law

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employer incident to processing a wage garnishment order make dismissal of the employee an attractive alternative. Second, in those jurisdictions which exempt a certain portion of wages from garnishment, the employer may be subject to double liability.' If he fails to assert the debtor's statutory exemptions or to notify the debtor that such exemptions exist, the court may order the employer to pay to the employee-debtor that portion of the debtor's wages which the employer wrongfully allowed to be garnished. Similarly, should the employer fail to withhold the appropriate amount of the debtor's wages, the employer may be ordered to pay the creditor that amount.").

167. Pub. L. No. 90-321, § 304, 82 Stat. 163 (codified as amended at 15 U.S.C. § 1674(a) (2018)).

168. Willborn Memorandum, *supra* note 89, at 6 n.19 ("The federal law has generally been interpreted to permit enforcement actions only by the Secretary of Labor and not to authorize an implied private cause of action.").

169. James W. Lippert, *Garnishment under the Consumer Credit Protection Act and the Uniform Consumer Credit Code*, 38 U. CIN. L. REV. 338, 347 (1969).

170. *Id.* at 348.

prohibits firing for one instance of wage garnishment,<sup>171</sup> states take a variety of approaches. Kentucky adopts the minimum federal standard, and “[n]o employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one (1) indebtedness.”<sup>172</sup> In Maryland, it is a misdemeanor to fire an employee for “any one indebtedness within a calendar year.”<sup>173</sup> In Connecticut, “no employer may discipline, suspend or discharge an employee because of any wage execution against the employee unless the employer is served with more than seven wage executions against the employee in a calendar year.”<sup>174</sup> Many states, including Nevada,<sup>175</sup> Maine,<sup>176</sup> Georgia,<sup>177</sup> Colorado,<sup>178</sup> and Delaware,<sup>179</sup> prohibit employers from firing an employee because the employee’s wages are subject to withholding.

States enforce these prohibitions on discharge with a range of sanctions that include criminal penalties, liability for back pay, or an obligation to reinstate the employee.<sup>180</sup> Illinois criminalizes such discharges and makes them a “Class A misdemeanor,”<sup>181</sup> as does Missouri.<sup>182</sup> Colorado imposes civil liability on the employer for the employee’s discharge and can require reinstatement and damages, including “lost wages not to exceed six weeks, costs, and reasonable

171. Pub. L. No. 90-321, § 304, 82 Stat. at 163.

172. KY. REV. STAT. ANN. § 427.140 (West, Westlaw through 2018 Reg. Sess.).

173. MD. CODE ANN. COM. LAW § 15-606 (West, Westlaw through 2018 Reg. Sess.).

174. CONN. GEN. STAT. § 52-361a(j) (West, Westlaw through 2018 Feb. Reg. Sess.).

175. NEV. REV. STAT. ANN. § 31.298 (West, Westlaw through 2017 Reg. Sess.) (stating that in Nevada, “[i]t is unlawful for an employer to discharge or discipline an employee exclusively because the employer is required to withhold the employee’s earnings pursuant to a writ of garnishment”).

176. ME. REV. STAT. tit. 14, § 3127-B(6) (West, Westlaw through 2017 2d Reg. Sess. and Spec. Sess. of the 128th Legislature).

177. GA. CODE ANN. § 18-4-26 (West, Westlaw through 2018 Legis. Sess.).

178. COLO. REV. STAT. ANN. § 5-5-107 (West, Westlaw through 2018 2d Reg. Sess.) (stating that in Colorado, “[n]o employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction”).

179. DEL. CODE ANN. § 3509 (West, Westlaw through 81 Laws 2018) (stating that in Delaware, “[a]n employer shall not dismiss an employee because the employer was summoned as garnishee for the employee”).

180. Willborn Memorandum, *supra* note 89, at 6 n.19 (noting that “some States permit private causes of action to enforce this restriction”).

181. 735 ILL. COMP. STAT. ANN. § 12-818 (West, Westlaw through 2018 Reg. Sess.).

182. MO. STAT. ANN. § 525.030 (West, Westlaw through 2018 2d Reg. Sess.).

attorney fees.”<sup>183</sup> In New York, an “employee or prospective employee may institute a civil action for damages for wages lost as a result of a violation of this section within ninety days after such violation.”<sup>184</sup> Damages include up to six weeks of lost wages and an order reinstating—in the case of a fired employee—or hiring, in the case of a job applicant.<sup>185</sup> Additionally, the employer’s acts can be punished as contempt of the court. In Minnesota, employees have ninety days to bring a civil action for this type of discharge.<sup>186</sup> Further, the Minnesota statute allows employees to be reinstated and to recover twice the wages lost to the violation.<sup>187</sup>

The Uniform Act would make it unlawful to fire an employee no matter how many times wages are garnished,<sup>188</sup> and would offer even greater protection by prohibiting other adverse actions because of a garnishment.<sup>189</sup> The Uniform Act does not include specific remedies if employers violate the law, but rather incorporates by reference “the powers, remedies, and procedures used to enforce [the state’s fair employment practices law].”<sup>190</sup> The Uniform Law Commission has asserted that:

There are two main advantages of using a cross-reference to define these enforcement procedures. First, it means this language can be short and sweet for a provision that is not likely to be used very often. Second, it means that procedural issues that might arise under this statute are likely to have already been well ventilated under the state’s fair employment practices statute.<sup>191</sup>

By prohibiting retaliation—regardless of the number of garnishments—the Uniform Act would strengthen the protections for employees. However, by limiting an employee’s remedies to those provided in the state’s fair employment practices law, the Uniform Act

183. COL. REV. STAT. ANN. § 13-54.5-110(2) (West, Westlaw through 2018 2d Reg. Sess.).

184. N.Y. C.P.L.R. § 5252(2) (McKinney 2018).

185. *Id.*

186. MINN. STAT. § 571.927, subdiv. 2 (2018).

187. *Id.*

188. UNIF. WAGE GARNISHMENT ACT § 19(a) (UNIF. LAW COMM’N, Proposed Official Draft 2016).

189. *Id.*

190. *Id.* § 19(b).

191. UNIF. WAGE GARNISHMENT ACT § 10 (UNIF. LAW COMM’N, Tentative Draft, June 2015).

could deprive employees of some protections that already exist under a state's garnishment laws.<sup>192</sup> In the absence of a cause of action already provided in some state wage garnishment statutes, employees who are fired for wage garnishment would not have the right to damages or the right to reinstatement.<sup>193</sup>

As states revise their garnishment laws, they should prohibit the practice of taking adverse actions against employees whose wages are garnished and prescribe a remedy for such actions. If states incorporate by reference the sanctions of their fair employment practice laws, states should ensure a seamless application to adverse actions under their garnishment laws.

#### *E. Clarifying the Application of Garnishment to Various Types of Wage Payments*

The formula used in the CCPA to calculate the maximum amount that can be garnished from an employee's wages is based on a forty-hour work week.<sup>194</sup> But many people, particularly those with low incomes, have alternative work arrangements.<sup>195</sup> Although the CCPA is flexible enough to apply to alternative work arrangements, such arrangements can make calculating the correct amount of garnishment difficult for an employer.<sup>196</sup> Much of the litigation over

192. UNIF. WAGE GARNISHMENT ACT § 15 (UNIF. LAW COMM'N, Tentative Draft, Sept. 2015). Alabama did not have a fair employment practice law when the Uniform Act was drafted.

193. *Filardo v. Foley Bros., Inc.*, 78 N.E.2d 480, 482–83 (N.Y. 1948), *rev'd on other grounds*, 336 U.S. 281 (1948) (concluding in finding a right to damages that it is not enough that “the very ones whom the law was intended to protect . . . must satisfy themselves with knowing that somebody had gone to jail or paid a fine for violating the law” and that “[s]uch would, indeed, be a Pyrrhic victory for the workman, consoling perhaps to his feelings, but of very little value in giving to him what the law says he has earned and is due him”).

194. FACT SHEET #30, *supra* note 38, at 2.

195. See LAWRENCE F. KATZ & ALAN B. KRUGER, *THE RISE AND NATURE OF ALTERNATIVE WORK ARRANGEMENTS IN THE UNITED STATES, 1995-2015* 1, 6 (2016), [https://krueger.princeton.edu/sites/default/files/akrueger/files/katz\\_krueger\\_cws\\_-\\_march\\_29\\_20165.pdf](https://krueger.princeton.edu/sites/default/files/akrueger/files/katz_krueger_cws_-_march_29_20165.pdf) [<https://perma.cc/R9DV-E4X4>] (noting that the Urban Institute reports an increase from 10.1% to 15.8% of all workers employed in alternative work arrangements from 2005 to 2015 and that alternative work arrangements include independent contractors, on-call workers, temporary help agency workers, and workers provided by contract firms).

196. N.M. STAT. ANN. § 35-12-7 (West, Westlaw through 2018 2d Reg. Sess. of the 53rd Legis.) (recognizing that not everyone works a forty-hour work week and

wage garnishment in the past fifty years has centered on employers asserting that wage garnishment should not apply and creditors asserting that it does.<sup>197</sup> Three common employment arrangements that complicate the application of the wage garnishment formula and have triggered litigation are tips, advances, and independent contractor status.

### 1. Tips

Although tips are considered income under federal tax law,<sup>198</sup> they are not considered earnings for the purposes of the wage garnishment law under the Fair Labor Standards Act.<sup>199</sup> A United States Department of Labor opinion explained that wage garnishment “is inherently a procedural device to reach assets in the hands of the garnishee,” and that “[t]ypically, tips are paid by a third person to an employee, and do not pass through the hands of the employer.”<sup>200</sup> However, some situations may occur where “customer payments would constitute ‘earnings’ under the [CCPA] definition.”<sup>201</sup>

The Superior Court of New Jersey concluded that the critical distinction between tips that are treated as earnings and tips that are not is whether “monies due to the judgment debtor are ‘in the hands of a third-party garnishee.’”<sup>202</sup> The court held that pooled tips that are

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stating that “the director of the financial institutions division [of the regulation and licensing department] shall provide a table giving equivalent exemptions for pay periods of other than one week”).

197. See *Big M, Inc., v. Tex. Roadhouse Holding, LLC*, 1 A.3d 718, 721 (N.J. Super. Ct. App. Div. 2010) (noting that an employer was sued for not including tips in the calculation of the employee’s garnishable wages and that the employer remitted a payment of \$4.21, the creditor sought a judgment for the entire amount of the employee’s debt, and that ultimately, the employer had no liability because he was following federal law in not treating tips as income).

198. IRS, INTERNAL REVENUE BULLETIN: 2012-26 Rev. Rul. 2012-18, [https://www.irs.gov/irb/2012-26\\_IRB#RR-2012-18](https://www.irs.gov/irb/2012-26_IRB#RR-2012-18) [<https://perma.cc/XGK8-DDQ2>].

199. FACT SHEET #30, *supra* note 38, at 1–2.

200. See *Big M, Inc.*, 1 A.3d at 722 (quoting U.S. Dep’t of Labor, Wage & Hour Div., Opinion Letter WH-95 (Dec. 9, 1970)).

201. See *id.* at 720 (noting that “a system in which tips are pooled and distributed in accordance with a formula to all service staff, or recorded and remitted on a periodic basis, cash tips and gratuities may be considered earnings and subject to wage garnishment”).

202. *Id.* (quoting SYLVIA B. PRESSLER & PETER G. VERNIERO, CURRENT N.J. COURT RULES, Comment 1.6 on R. 4:59–1(a) (2010)).

distributed among employees by the employer are subject to wage garnishment, but tips on credit cards or paid in cash directly to the employee by the customer are not.<sup>203</sup> An Oklahoma court also held that when a tip is paid directly to the employee by cash or credit card, the tip is not subject to wage garnishment.<sup>204</sup>

## 2. *Advances*

Litigation can also arise over garnishments when “the employee is indebted to the employer and is concerned specifically with the right of the garnishee-employer to set off such indebtedness against any amount owing by the latter to the employee.”<sup>205</sup> Employers are permitted to advance wages and then deduct those wages from an employee’s earnings.<sup>206</sup> However, an employer who simply assumes that garnishment laws do not apply to a particular work arrangement and fails to respond to interrogatories may incur liability<sup>207</sup> because the failure to respond triggers the presumption that the employee is indebted to the employer.<sup>208</sup> Examples of such litigation include a long-distance truck driver indebted to his employer for expenses<sup>209</sup> and a waitress in a lounge who was required to buy drinks at the beginning of her shift and resell them to customers.<sup>210</sup>

203. *See id.*

204. *Capital One Bank (USA) N.A. v. Sullivan*, 347 P.3d 307, 310 (Okla. Civ. App. 2015).

205. C. R. McCorkle, Annotation, *Garnishment of Salary, Wages, or Commissions Where Defendant Debtor Is Indebted to Garnishee-Employer*, 93 A.L.R. 2d 995 § 1[a] (1964); *see Wal-Mart Stores, Inc. v. D.A.N. Joint Venture III, L.P.*, 288 S.W.3d 627, 633 (Ark. 2008).

206. Letter from Barbara Relerford, Fair Labor Standards Team, Office of Enft Policy, Wage & Hour Div., U.S. Dep’t of Labor, to anonymous recipient (Oct. 8, 2004), [https://www.dol.gov/whd/opinion/FLSANA/2004/2004\\_10\\_08\\_19FLSA\\_NA\\_recoup.htm](https://www.dol.gov/whd/opinion/FLSANA/2004/2004_10_08_19FLSA_NA_recoup.htm) [<https://perma.cc/9ZVA-7J32>].

207. *See Walker v. Carolina Mills Lumber Co.*, 429 So.2d 1065, 1070 (Ala. Civ. App. 1983) (quoting *Packard Motors Co. v. Tally*, 103 So. 455, 457 (Ala. 1925)) (noting that an Alabama man who worked as a lumber brokerage agent was paid on commission and was allowed to draw against his account, but if the sale became uncollectable, the sale would be charged back against his commission account).

208. *Tower Credit, Inc. v. Carpenter*, 825 So.2d 1125, 1128 (La. 2002).

209. *Harpster v. Reynolds*, 524 P.2d 212, 213–14 (Kan. 1974).

210. *See Tower Credit, Inc.*, 825 So.2d at 1126–27.



### 3. *Independent Contractor Status*

The question of whether an individual is an independent contractor has precipitated litigation over wage garnishment. The Ohio Court of Appeals concluded:

In determining who has the right to control the work, we must examine the individual facts of the case: The factors to be considered include ... who controls the details and quality of the work; who controls the hours worked; who selects the materials, tools and personnel used; who selects the routes travelled; the length of employment; the type of business; the method of payment; and any pertinent agreements or contracts.<sup>211</sup>

Different courts have reached different conclusions about whether independent contractors are covered by the CCPA.<sup>212</sup>

The Uniform Act eliminates the distinction between employees and independent contractors.<sup>213</sup> The Uniform Act defines an employee—including a former employee who is owed wages—as someone who “is treated by an employer as an employee for federal income tax purposes” or “receives earnings from an employer through periodic payments and is not treated by the employer as an employee for federal-income-tax purposes.”<sup>214</sup> This provision emerged out of a concern that some workers are classified as independent contractors “who seem to fit within the policy of garnishment protection.”<sup>215</sup> The

211. *Boylard v. Giant Eagle*, 96 N.E.3d 999, 1008 (Ohio Ct. App. 2017) (citing *Bostic v. Connor*, 524 N.E.2d 881, 884 (Ohio 1988)).

212. See *Yaden v. Osworth*, 234 B.R. 497, 499–500 (B.A.P. 9th Cir. 1999) (including independent contractors as employees); *Coward v. Smith*, 636 P.2d 793, 794 (Kan. Ct. App. 1981) (holding that monies due an independent contractor for construction services are not wages within the meaning of the state garnishment statute and are thus partially exempt from garnishment). *But see In re Sexton*, 140 B.R. 742, 743–44 (Bankr. S.D. Iowa 1992) (suggesting that monies paid for services are wages).

213. UNIF. WAGE GARNISHMENT ACT, prefatory note 1 (UNIF. LAW COMM’N, Proposed Official Draft 2016).

214. *Id.* § 2(6)(A), (B).

215. Memorandum from Steve Willborn, Reporter for the Unif. Garnishment Act, to Drafting Comm., Unif. Law Comm’n 3 (Mar. 2, 2015), [https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=197bfc3c-c67b-73ec-0a63-8f6dc3ccb988&forceDialog=\[http://perma.cc/42U5-73SJ\]](https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=197bfc3c-c67b-73ec-0a63-8f6dc3ccb988&forceDialog=[http://perma.cc/42U5-73SJ]) (citing *In re Galvez*, 990 P.2d 187, 190 (Nev. 1999), *superseded by statute*, NEV. REV. STAT. § 21.090(1)(g) (2017) (holding that real estate commissions were not protected under a state’s wage garnishment law)).

Uniform Act would eliminate the uncertainty associated with independent contractor status and would likely reduce litigation. States should adopt the Uniform Act's definition because it protects workers who are "virtually indistinguishable" from employees.<sup>216</sup>

*F. Administering the Distribution of Garnished Wages*

State laws determine how and to whom employers deliver payments of garnished wages—typically, to the court,<sup>217</sup> the sheriff,<sup>218</sup> the creditor,<sup>219</sup> or the creditor's attorney.<sup>220</sup> In Ohio, the employer pays the garnished wages to the court and payment is accompanied by an "Interim Report and Answer of Garnishee."<sup>221</sup> In Georgia, garnished wages are delivered to the court and then distributed twenty days later if the employee has not filed a claim.<sup>222</sup> In Pennsylvania, the employer must send "withheld wages to the prothonotary of the court of common pleas to be recorded, and upon receipt, the wages shall be sent to the creditor."<sup>223</sup> According to the Uniform Law Commission, the practice in Pennsylvania is also the

216. NAT'L CONSUMER LAW CTR., THE UNIFORM WAGE GARNISHMENT ACT: BENEFITS AND DANGERS FOR WAGE EARNERS 2 (2017), <https://www.nclc.org/issues/uniform-wage-garnishment-act-benefits-dangers-wage-earners.html> [<https://perma.cc/37HL-ZMCB>] [hereinafter BENEFITS AND DANGERS].

217. See, e.g., ALASKA STAT. § 09.38.035(b) (West, Westlaw through 2018 2d Reg. Sess.) (directing employers to pay into the court all nonexempt earnings subject to garnishment); MISS. CODE ANN. § 11-35-23 (West, Westlaw through 2018 Reg. and 1st Extraordinary Sess.) (placing the employers in the role of a fiduciary by obligating them to "retain all sums collected pursuant to the writ and make only one (1) payment into court at such time as the total amount shown due on the writ has been accumulated" and stating that the circuit clerk has discretion to direct the employer to send garnished wages to the attorney of record or to the clerk of court).

218. See, e.g., IDAHO CODE § 11-704 (West, Westlaw through 2018 2d Reg. Sess.) (directing the employer to pay garnished wages to the sheriff).

219. See, e.g., ME. STAT. tit. 14, § 3127-B (West, Westlaw through 2017 2d Reg. Sess.) (directing the employers to withhold the garnished wages from the employee and to pay them to the judgment creditor).

220. See, e.g., ARIZ. REV. STAT. § 12-1598.11(B)(3) (West, Westlaw through 2018 2d Reg. Sess. of the 53rd Legis.) (requiring employers to deliver garnished wages to the creditor or the creditor's attorney).

221. OHIO REV. CODE ANN. § 2716.07 (West, Westlaw through 2018 Legis. Sess.).

222. GA. CODE ANN. § 18-4-11 (West 2018).

223. 42 PA. STAT. AND CONS. STAT. ANN. § 8127 (West, Westlaw through 2018 Reg. Sess. 2018).

practice in Alabama, Alaska, Iowa, Massachusetts, Missouri, Nebraska, New Hampshire, Tennessee, Virginia, and Wyoming.<sup>224</sup>

In some states, law enforcement plays a role in the collection of garnished wages. New York provides for delivery of garnished wages to the sheriff and imposes a duty on the sheriff to “at least once every ninety days from the time a levy shall be made thereunder, to account for and pay over to the person entitled thereto all monies collected thereon, less his lawful fees and expenses for collecting the same.”<sup>225</sup> In Idaho, the sheriff serves the writ of garnishment<sup>226</sup> and accepts delivery of garnished wages.<sup>227</sup> Arkansas, Delaware, Florida, Hawaii, Illinois, Kansas, Kentucky, and Montana all require direct payment to the creditor’s attorney.<sup>228</sup>

The Uniform Law Commission’s Drafting Committee on Wage Garnishment conducted a survey of state practices around the question of where states direct employers to send garnished wages.<sup>229</sup> The committee concluded that “by far the most common answers to this question are (1) to the Court or (2) to the creditor’s attorney.”<sup>230</sup> Even though the majority of states direct payments to the court or the plaintiff’s attorney, the Uniform Act would direct payment to the creditor.<sup>231</sup>

One of the Uniform Law Commission’s stated goals was to “create a procedure that, once initiated, will occur entirely outside of court unless a creditor, employee, or employer requests a hearing.”<sup>232</sup> To serve that goal, the Uniform Act would remove the courts from the collection process. Instead, employers would pay creditors directly.<sup>233</sup> The court’s role would be limited to issuing the order of

224. DRAFTING COMM. ON WAGE GARNISHMENT, UNIF. LAW COMM’N, MEETING MATERIALS APPENDIX 9 (2014),

[http://www.uniformlaws.org/shared/docs/wage%20garnishment/2014mar\\_WGA\\_Mtg%20Materials%20Appendix.pdf](http://www.uniformlaws.org/shared/docs/wage%20garnishment/2014mar_WGA_Mtg%20Materials%20Appendix.pdf) [<https://perma.cc/6M8R-6YX7>].

225. N.Y. C.P.L.R. § 5231 (McKinney 2018).

226. IDAHO CODE § 11-706 (West, Westlaw through 2018 2d Reg. Sess.) (stating that the county sheriff serves the garnishment writ).

227. *Id.* § 11-704 (stating that in Idaho, the employer is directed to pay garnished wages to the sheriff).

228. DRAFTING COMM. ON WAGE GARNISHMENT, *supra* note 224, at 10.

229. *Id.* at 9.

230. *Id.* at 10.

231. *Id.*

232. ULC Memorandum, *supra* note 96, at 1.

233. UNIF. WAGE GARNISHMENT ACT § 15 (a)(3)(C) (UNIF. LAW COMM’N, Proposed Official Draft 2016).

garnishment, and “[t]hat is the last time the court will be involved unless an employee, employer, or creditor seeks its protection. The employer’s answer would be made directly to the creditor and amounts deducted from the employee’s earnings would be remitted directly to the creditor.”<sup>234</sup>

Requiring the employer to make payments directly to the creditor presents problems for both employees and employers because they may not be able to prove that a garnishment has been paid. Although the Uniform Act provides employers, employees, and creditors with the right to request a hearing,<sup>235</sup> it can be expensive and daunting to invoke the court process once the garnishment process is removed from court oversight. States should not dismantle their existing mechanisms for ensuring that payments are credited to the employee and that garnishment stops when a debt is paid. Dismantling such mechanisms would create problems for both employees and employers. When the legislation was introduced in Nebraska, a legislator objected to the provision that would remove courts from the collection process:

[T]he accounting is being taken away from the court and the accounting is being done by employers and by plaintiffs’ attorneys. And we have a concern about that for debtors mostly because ... employers particularly have a very difficult time keeping track of what funds have been garnished. So if you’re going to make the debtor get that information from the employer in order to prove whether they’ve paid the debt or not, we’re seeing that as being a potential roadblock for the debtor and a problem for the court because we will have hearings trying to figure out what’s owed with evidentiary information from the employer and the creditor and the debtor.<sup>236</sup>

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234. A SUMMARY, *supra* note 51, at 1.

235. UNIF. WAGE GARNISHMENT ACT § 18(a) (UNIF. LAW COMM’N, Proposed Official Draft 2016).

236. *Adopt the Uniform Wage Garnishment Act: Hearing on Legis. B. 37, Legis. B. 105, Legis. B. 136 and Legis. B. 229 Before the Judiciary Comm.*, 2017 Leg., 105th Sess. 9 (Neb. 2017) (statement of Angela Burmeister, attorney on behalf of the Nebraska State Bar Association) [hereinafter *Adopt the Uniform Wage Garnishment Act Hearing*].

*G. Requiring the Creditor to Renew Garnishments*

Closely related to the question of who should administer wage garnishment is the question of whether a garnishment should be renewed at regular intervals or should be filed once and allowed to remain in place until the judgment is paid. For example, garnishments in Oklahoma are effective until they are vacated, modified, satisfied, or dismissed, or until 180 days have elapsed from the effective date of the summons.<sup>237</sup> In North Dakota, garnishments remain in place for 360 days, but after that they must be renewed with additional notice to the employee.<sup>238</sup>

The Uniform Act would eliminate the requirements to renew garnishments and to provide periodic accountings.<sup>239</sup> Instead, a creditor could file a single garnishment that would end only when the debt is paid or when the employee leaves the job.<sup>240</sup> The argument in favor of allowing a single garnishment is that “[e]ach writ imposes additional expense upon the creditor and the employer.”<sup>241</sup>

While eliminating the obligation to renew a garnishment might provide some savings to employers, doing so provides enormous value to creditors, particularly third-party debt buyers who could set a garnishment in motion, walk away, and collect payments with no further obligation or oversight.<sup>242</sup> The elimination of this obligation would fuel the third-party debt buyer industry, which thrives on efficient debt collection.<sup>243</sup> In situations where the employee’s income is low and the post-judgment interest rate is high, the employee’s wages could be garnished for a period of years with no renewal or

237. OKLA. STAT. ANN. tit. 12, § 1173.4 (G)(3), (H)(2)(b) (West, Westlaw through 2018 2d Reg. Sess.) (stating that subsequent summons in the same cause of action can be filed after the 150th day of the previous garnishment lien to preserve the creditor’s place as a priority creditor).

238. N.D. CENT. CODE ANN. §§ 32-09.1-04, 32-09.1-20 (West, Westlaw through 2017 Reg. Sess.).

239. UNIF. WAGE GARNISHMENT ACT §§ 8, 9 (UNIF. LAW COMM’N, Proposed Official Draft 2016).

240. *Id.* § 9.

241. Grosse & Lean, *supra* note 80, at 789.

242. See FED. TRADE COMM’N, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY 12 (2013), <https://www.ftc.gov/reports/structure-practices-debt-buying-industry> [https://perma.cc/K7BV-J9HH] (stating that creditors may sell their debts to third-party debt buyers).

243. *Id.* at 12–13; see Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 HARV. J. ON LEGIS. 41, 53–55 (2015).

accounting from the creditor.<sup>244</sup> The elimination of the requirement to renew a garnishment would erode the employee's protection against wrongful garnishment.

The Uniform Act tries to address this problem by encouraging "creditors to stop wrongful garnishments promptly and return any funds wrongfully garnished."<sup>245</sup> If a court determines that a creditor acted in bad faith in seeking a garnishment, the creditor could be liable for \$1,000.<sup>246</sup> If a creditor fails to stop a wrongful garnishment or to request a hearing to determine if the garnishment is wrongful, the creditor could be fined \$50 a day, plus the employer's and the employee's reasonable attorney's fees.<sup>247</sup> However, to invoke those remedies, an employee who suspected that wage garnishment had continued after the debt was paid would have to request a "calculation worksheet" from the employer,<sup>248</sup> notify the creditor stating the reason why the garnishment was wrong,<sup>249</sup> and file a motion with the court requesting a hearing.<sup>250</sup> As a practical matter, the employee would have to evaluate the cost of drawing his or her employer into a court case.

It is impossible to construe the provision that eliminates the requirement for renewal of a garnishment as being consistent with the legislative intent—to protect consumers—that prompted the passage of the CCPA.<sup>251</sup> In questioning the wisdom of this approach, one concerned Nebraska citizen, with twenty years in the garnishment practice, opined:

[T]here is definitely a benefit to a judgment debtor receiving something at least every 90 days sort of with an update saying, yes, the garnishment is still going on. Under [the Uniform Act] garnishment would just continue on until the debt is paid . . . I think that it's not necessarily a good thing

244. See Brian P. Miller, *Statutory Post-Judgment Interest: The Effect of Legislative Changes After Judgment and Suggestions for Construction*, 1994 BYU L. REV. 601, 609 (1994).

245. A SUMMARY, *supra* note 51, at 2.

246. UNIF. WAGE GARNISHMENT ACT § 17 (a)(1) (UNIF. LAW COMM'N, Proposed Official Draft 2016).

247. *Id.* § 17 (a)–(c).

248. *Id.* § 8(e).

249. *Id.* § 17(b).

250. *Id.* § 10.

251. See Pub. L. No. 90-321, § 301(a), 82 Stat. 163 (1968) (codified at 15 U.S.C. § 1671(a) (1968)).

to take away the periodic, at least, notifications to judgment debtors.<sup>252</sup>

States should recognize the potential harm to the debtor of turning on the spigot of wage garnishment with no mechanism to turn it off. Requiring creditors to renew garnishments entails some cost to creditors and employers, but provides employees with important protections against garnishments that would otherwise be set in motion with no oversight or end date.

#### *H. Preserving the Order of Claims*

The question of whether it is possible to have multiple concurrent garnishments is an old one.<sup>253</sup> Federal law is silent on the issue and does not prescribe the order in which garnishments are to be paid.<sup>254</sup> Most states have adopted “first-in-time, first-in-rights” rules, under which garnishments are satisfied in the order that they are presented to the employer.<sup>255</sup> Subsequent creditors are paid once the first garnishment is satisfied.<sup>256</sup>

The law in Delaware is typical: “On any amount of wages due, only 1 attachment may be made. Any creditor causing such attachment to be made shall have the benefit of priority until the judgment with costs for which the attachment was made has been paid in full.”<sup>257</sup> Multiple garnishments in Georgia<sup>258</sup> and the District of Columbia<sup>259</sup> are handled in the same manner. Even under

252. *Adopt the Uniform Wage Garnishment Act Hearing*, *supra* note 236, at 37.

253. Brunn, *supra* note 30, at 1224–25 (“In a number of states, among them Connecticut, Delaware, Illinois, Kansas, Louisiana, New York, and West Virginia, only one judgment creditor may levy against wages at one time. Generally, the first creditor who gets his papers to an officer is given priority until he is paid off; this seems desirable to minimize economic pressures from more than one creditor concurrently. Such provisions have been criticized from the point of view of collection agencies because one creditor with a substantial judgment can exclude all others for a long time.”).

254. See FACT SHEET #30, *supra* note 38.

255. MISS. CODE ANN. § 11-35-24(1) (West, Westlaw through 2018 Reg. Sess. and 1st Extraordinary Sess.) (stating that Mississippi has a first-in-time rule, but if two garnishments are filed on the same day, then the employer is directed to pay the smaller garnishment first).

256. *Id.* § 11-35-24(3).

257. DEL. CODE ANN. tit. 10, § 4913(b) (West, Westlaw through 2018).

258. GA. CODE ANN. § 18-4-18 (West, Westlaw through 2018 Leg. Sess.).

259. D.C. CODE ANN. § 16-572 (West, Westlaw through 2018).

Pennsylvania's limited garnishment statute, the "first-in-time" rule applies. In Pennsylvania, if multiple creditors attempt to garnish an employee's wages, the garnishments "shall be satisfied in the order in which they were served. Each prior attachment shall be satisfied before any effect is given to a subsequent attachment."<sup>260</sup>

The Uniform Act would divide multiple garnishments of equal priority<sup>261</sup> among creditors. Additionally, multiple creditors would share equally in available funds, regardless of when the creditor obtained the garnishment.<sup>262</sup> The Uniform Act would direct the employer to "send an equal amount of the withheld earnings to each person entitled to a deduction without regard to the time the deduction became effective, the amount of the debt, or any other factor."<sup>263</sup>

This approach would be a boon to creditors because they would be assured of receiving at least a slice of the employee's wages without being blocked by an earlier creditor. It would take the guesswork out of garnishment because if a garnishment were in place, the second, third, or fourth creditor would be relieved of the obligation to come back and see if the first garnishment has been satisfied.<sup>264</sup> For example, if an employee has \$300 available for remittance, each of the three creditors would receive \$100, regardless of the amount owed or when the garnishment was filed.<sup>265</sup> Most multiple creditors would

260. 42 PA. STAT. AND CONS. STAT. ANN. § 8127(c) (West, Westlaw through 2018 Reg. Sess.).

261. Other obligations are enforced through wage attachment. The Uniform Act refers to these as "ordered deductions." See UNIF. WAGE GARNISHMENT ACT § 2(11), cmt. (UNIF. LAW COMM'N, Proposed Official Draft 2016) (noting that "ordered deductions" include child and spousal support and orders to pay state and federal taxes); see *Payroll Discounts for NFIB Members*, NAT'L FED'N INDEP. BUSINESSES (Dec. 3, 2010), <https://www.nfib.com/content/resources/money/understanding-the-guidelines-for-wage-garnishments-55444/> [<http://perma.cc/A75V-23AG>] (explaining that generally, ordered deductions are given priority over wage garnishments).

262. See A SUMMARY, *supra* note 51, at 2.

263. UNIF. WAGE GARNISHMENT ACT § 14(a)(2) (UNIF. LAW COMM'N, Proposed Official Draft 2016).

264. STUDY COMM. ON WAGE GARNISHMENT, UNIF. LAW COMM'N, REPORT TO SCOPE AND PROGRAM 3 (2012), <http://www.uniformlaws.org/shared/docs/wage%20garnishment/Tab%2011%20Wage%20Garnishment%20Report%20to%20Scope%2012-17-12.pdf> [<https://perma.cc/RW38-VZXV>] (describing the requirement that gives priority to the first garnishment served as creating "a race for priority").

265. UNIF. WAGE GARNISHMENT ACT § 14 cmt. (UNIF. LAW COMM'N, Proposed Official Draft 2016).



receive relatively small shares, as the majority of garnishments are for employees who earn between \$25,000 and \$40,000 dollars a year.<sup>266</sup>

It is not clear how this approach would benefit employers who would have to administer multiple garnishments simultaneously and divide garnished wages equally among a shifting pool of creditors. In the past, confusion over multiple successive garnishments has drawn employers into litigation.<sup>267</sup> Increasing the number of garnishments that the employer must manage at one time would likely only increase employers' distaste for the garnishment process.<sup>268</sup> In opposing this provision of the Uniform Act, one legislator said:

[The proposed legislation] has some pretty hefty requirements for employers, . . . one of which is dividing the amounts garnished by every garnishment that they have. Well, you know, if you have a person that . . . owes lots of debts, that employer could be dividing [and] paying \$2 to 37 people. That's a pretty hefty burden on employers and a lot of them have difficulty right now.

This provision of the Uniform Act would "make wage garnishment a more attractive tool for debt collectors" without benefiting either employers or employees.<sup>269</sup>

### *I. Retaining State Protections for Consumers*

Wage garnishment practices have their roots in state laws that existed before the CCPA was passed.<sup>270</sup> As the CCPA has evolved over the past fifty years, some states have offered their citizens protections

266. THE UNTOLD STORY, *supra* note 67, at 13.

267. See, e.g., *Brown v. St. Vincent Infirmary*, 587 S.W.2d 7, 7-8 (Ark. 1979) (showing the employer's confusion concerning multiple garnishments and noting that the employee had "about 20 other writs of garnishment filed against him"). The trial court found excusable neglect, and the creditor appealed, but the Court of Appeals affirmed. *Id.* at 8.

268. Lippert, *supra* note 169, at 347 ("Garnishment subjects [the employer] to numerous notices and the necessity of filing written returns. He is often compelled to retain counsel and make court appearances. Payroll accounting adjustments must often be made . . . These expenditures and inconveniences are usually not tolerated by the employer.").

269. BENEFITS AND DANGERS, *supra* note 216, at 2.

270. THE UNTOLD STORY, *supra* note 67, at 5 ("The garnishment process was created in most states 100 or more years ago to allow creditors to circumvent a ploy that debtors often used to avoid paying debts.").

that exceed federal requirements.<sup>271</sup> For example, Florida provides an exemption for the head of a family that can only be waived if the employee consents in writing.<sup>272</sup> In Arizona, an employee who can show that the garnishment would be an “extreme economic hardship” can ask the court reduce the amount of the garnishment from 25% to 15% of the employee’s disposable earnings.<sup>273</sup> Oklahoma requires the court to consider whether the garnishment would “be an undue hardship by creating less than a minimal level of subsistence,” and if it creates undue hardship, the court can exempt all or some earnings.<sup>274</sup>

One scholar observed: “It is a fundamental paradox of our society that we spend billions of dollars trying to help the poor through welfare programs, while maintaining collection laws which make it difficult for them to hold a steady job.”<sup>275</sup> Minnesota has addressed this paradox directly by providing that wages of individuals who have received certain public benefits or who have been an inmate of a correctional institution are exempt from garnishment for six months after the individual returns to employment.<sup>276</sup>

271. See Peter V. Letsou, *The Political Economy of Consumer Credit Regulation*, 44 EMORY L.J. 587, 609 (1995) (“While the role of state law has, to a certain extent, been limited by federal law, state law remains important because the restrictions[—]particularly those dealing with security interests in household goods and wage garnishment[—]often go further than their federal counterparts.”).

272. See FLA. STAT. § 222.11(2) (West, Westlaw through 2018 2d Reg. Sess.) (“Disposable earnings of a head of a family, which are greater than \$750 a week, may not be attached or garnished unless such person has agreed otherwise in writing.”).

273. See ARIZ. REV. STAT. ANN. § 12-1598.10(F) (West, Westlaw through 2018 1st Spec. and 2d Reg. Sess.) (“If at the hearing the court determines that the judgment debtor is subject to the twenty-five percent maximum disposable earnings provision under § 33-1131, subsection B and based on clear and convincing evidence that the judgment debtor or the judgment debtor’s family would suffer extreme economic hardship as a result of the garnishment, the court may reduce the amount of nonexempt earnings withheld under a continuing lien ordered pursuant to this section from the twenty-five percent to not less than fifteen percent.”).

274. OKLA. STAT. tit. 31, § 1.1(B) (West, Westlaw through 2018 2d Reg. Sess.).

275. See Grosse & Lean, *supra* note 80, at 766.

276. See MINN. STAT. § 550.37, subdiv. 14 (2018) (“The salary or earnings of any debtor who is or has been an eligible recipient of government assistance based on need, or an inmate of a correctional institution shall, upon the debtor’s return to private employment or farming after having been an eligible recipient of government assistance based on need, or an inmate of a correctional institution, be exempt from attachment, garnishment, or levy of execution for a period of six months after the

Some states impose limits on the collection of certain types of debt. In Delaware, creditors must wait sixty days after a default judgment is entered on a contract or installment account.<sup>277</sup> In Iowa, if the garnishment arises from a consumer-credit transaction, the employee has the opportunity to persuade the court that additional amounts should be exempt as “necessary for the maintenance of the consumer or a family supported wholly or partly by the earnings” of the consumer.”<sup>278</sup> Pennsylvania exempts wages from garnishment with few exceptions—10% of wages can be garnished, but only for a judgment “arising out of a residential lease” and only if the garnishment does not “place the debtor’s net income below the poverty income guidelines.”<sup>279</sup>

The adoption of the Uniform Act “carries the potential for rolling back important existing protections.”<sup>280</sup> Although the Uniform Act contemplates that states could vary the amount of the exemption from garnishment (expressed as either a percentage of disposable income or as some multiplier of the federal or state minimum wage),<sup>281</sup> the act would eliminate other variations that currently serve the interests of consumers.<sup>282</sup> Adoption of the Uniform Act would derail development of laws at the state level that would protect

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debtor’s return to employment or farming and after all public assistance for which eligibility existed has been terminated.”).

277. DEL. CODE ANN. tit. 6, § 4345 (West, Westlaw through 2018) (“[T]he salary or wages of a defendant are exempt from attachment for a period of 60 days from the date of default of the contract or installment account for any claim arising out of a contract or installment account subject to the provisions of this title.”).

278. IOWA CODE § 537.5105(4) (West, Westlaw through 2018 Reg. Sess.) (“The application shall designate the portion of the consumer’s earnings which are not exempt from garnishment under this section and other law, shall specify the period of time for which the additional exemption is sought, shall describe the judgment with respect to which the application is made, and shall state that the designated portion in addition to earnings that are exempt by law is necessary for the maintenance of the consumer or a family supported wholly or partly by the earnings.”).

279. See 42 PA. STAT. AND CONST. STAT. ANN. § 8127(a)(3.1) (West, Westlaw through 2018 Reg. Sess.) (“The wages, salaries and commissions of individuals shall while in the hands of the employer be exempt from any attachment, execution or other process except upon an action or proceeding . . . For amounts awarded to a judgment creditor-landlord arising out of a residential lease upon which the court has rendered judgment which is final.”).

280. BENEFITS AND DANGERS, *supra* note 216, at 1.

281. UNIF. WAGE GARNISHMENT ACT § 13 (UNIF. LAW COMM’N, Proposed Official Draft 2016).

282. Willborn, Consumer Issues, *supra* note 28, at 1.

consumers<sup>283</sup> and could encourage states to do away with existing protections.<sup>284</sup>

## V. CONCLUSION

Many of the practices once associated with debt collection—debtor’s prisons,<sup>285</sup> the seizure of personal property for unrelated debt,<sup>286</sup> company store arrangements,<sup>287</sup> revolving credit accounts that secured the debt of any purchase,<sup>288</sup> and contractual wage assignments<sup>289</sup>—were an ordinary, legal response to debt.<sup>290</sup> With hindsight, these practices seem unconscionable. While society may eventually conclude that seizing a percentage of a person’s income to satisfy a debt is also unconscionable, the practice persists in the majority of states.

This article does not argue for the abolition of wage garnishment but rather for legislative reforms that support low-wage workers and still allow for the collection of just debts. To achieve this goal, legislators must put aside their indignation toward people who are unable to pay their debts<sup>291</sup> and consider the “potentially drastic

283. See, e.g., H.R. 2811 § 2(a), 190th Gen. Court (Mass. 2017), <https://malegislature.gov/Bills/190/H2811> [<https://perma.cc/PZ3Q-9XYN>].

284. See BENEFITS AND DANGERS, *supra* note 216, at 1 (noting Carolyn Carter’s comments regarding consumer issues).

285. See Olivia C. Jerjian, *The Debtors’ Prison Scheme: Yet Another Bar in the Birdcage of Mass Incarceration of Communities of Color*, 41 N.Y.U. Rev. L. & Soc. Change 235, 242.

286. Rothschild v. Boelter, 18 Minn. 361 (1872).

287. Note, *Payment of Advance Wages in Trade Checks on Company Store*, 40 Yale L.J. 1105, 1105 (1931).

288. Thorne v. Walker Thomas Furniture Co., 198 A.2d 914, 914 (D.C. 1964).

289. Robert E. Scott, *Rethinking the Regulation of Coercive Creditor Remedies*, 89 Colum. L. Rev. 730, 731 (1989).

290. Sweeney, *supra* note 8, at 197 (“It is reported that Roman law permitted creditors to arrest a defaulting debtor, chain him, and offer him for sale as a slave. If no buyer were found, the creditors could cut up the debtor, each creditor receiving his proportionate share.”) (citing H. F. JOLOWICZ, *HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW* 190–92 (2d ed. 1952)).

291. Long Island Tr. Co. v. U.S. Postal Serv., 647 F.2d 336, 342 n.8 (2d Cir. 1981) (“[W]e proposed the complete abolishment of this modern-day form of debtors’ prison. But we were willing to listen to the weight of the testimony that restriction of this practice would solve many of the worst abuses, while abolishment might go too far in protecting the career deadbeat.”) (quoting 114 CONG. REC. 14,388 (1968) (statement of Rep. Sullivan)).

effects on the individual debtor” and the social cost of using the state as a collection agency.<sup>292</sup> All states have programs to help people transition from welfare to employment with the goal of fostering their economic security.<sup>293</sup> Wage garnishment operates at cross purposes with those programs because it provides a disincentive for people with low wages to work full time when they know they will receive less than full-time pay for months—or even years—until a debt is satisfied. Nothing good comes from driving people out of work or into poverty.

The single, most useful reform that states could initiate with respect to wage garnishment would be to protect a higher portion of wages.<sup>294</sup> This protection could be accomplished by either increasing the number of hours per week that are exempt from wage garnishment to at least forty hours or by exempting at least 90% of income from wage garnishment. States that have enacted minimum wages exceeding the federal minimum wage should use their own, higher amount in the formula for calculating wage garnishments. Revising the formula for wage garnishment is a simple reform that would protect low-wage workers and reduce the burden on employers by reducing the number of garnishments.

Legislators who are considering reforms to state wage garnishment laws should keep in mind that Congress enacted the CCPA to protect consumers, not to eliminate complexity for employers or to facilitate collection by creditors.<sup>295</sup> We now have fifty years’ experience with the CCPA as a consumer protection statute. Case law illuminates areas in which questions of interpretation have triggered litigation.<sup>296</sup> These include questions about when an employee can be fired due to a garnishment and whether certain

292. Charles J. Nabit, *Garnishment in Virginia*, WM & MARY L. REV. 793, 810 (1980).

293. ROBERT A. MOFFITT, FROM WELFARE TO WORK: WHAT THE EVIDENCE SHOWS 1 (2001), <https://pdfs.semanticscholar.org/9bed/b043ac63c6cb96edaa3fc640458809579071.pdf> [http://perma.cc/8LTH-C3RR].

294. NAT’L CONSUMER LAW CTR., NO FRESH START: HOW STATES LET DEBT COLLECTORS PUSH FAMILIES INTO POVERTY 6 (2013), <https://www.nclc.org/images/pdf/pr-reports/report-no-fresh-start.pdf> [http://perma.cc/T9DX-L5SQ].

295. *Long Island Tr. Co.*, 647 F.2d at 340 (stating that the act was “designed to curtail sharply the rights of creditors to garnish employee wages,” and “reveals Congress’s principal concern with the welfare of the debtor”).

296. See, e.g., *Marshall v. Safeway, Inc.*, 88 A.3d 735, 738 (Md. 2014); *Big M, Inc., v. Texas Roadhouse Holding, LLC*, 1 A.3d 718, 721 (N.J. Super. Ct. App. Div. 2010); *Boyland v. Giant Eagle*, 96 N.E.3d 999, 1008 (Ohio Ct. App. 2017).

employment practices—payments to independent contractors, advances, distribution of tips—constitute wages that are subject to garnishment. Some of the most useful reform proposed by the National Conference of Commissioners on Uniform State Laws addresses these issues. The Uniform Act would prohibit firing for garnishment and offer individuals who are treated as independent contractors the same protections as other workers. Another reform proposed in the Uniform Act that would benefit both employers and employees is better compensation to employers for the administrative costs associated with wage garnishment.

Unfortunately, other provisions of the Uniform Act may harm employees. Four provisions are of particular concern. First, the Uniform Act would allow garnishments to stay in effect until the entire amount owed is paid, with no requirement to periodically renew the garnishment or to provide accountings.<sup>297</sup> Second, the Uniform Act would dismantle oversight of the garnishment process.<sup>298</sup> Third, the Uniform Act would allow multiple garnishees to share garnished wages rather than accepting payment in the order of claims.<sup>299</sup> Finally, one of the biggest drawbacks of the Uniform Act is that in its quest for uniformity, it would eliminate some of the important protections that individual states have adopted to protect low-wage workers.<sup>300</sup> Uniformity would benefit all creditors and those employers who conduct business in more than one state, but not the consumers the CCPA was designed to protect.<sup>301</sup> If adopted, the Uniform Act would harm low-wage workers.

Wage garnishment is a mechanism for debt collection that is left over from another era when debt collection was local—if the

297. See *supra* Part IV.F.

298. See *supra* Part IV.E.

299. See *supra* Part IV.G.

300. See *supra* Part IV.H.

301. Willborn, *Indirect Threats*, *supra* note 73, at 39 (“[T]he primary emphasis of the proposed changes is improved uniformity and, hence, efficiency—which is very good for employers and only *sort of* good for employees. However, there is likely only a small chance that the effort will lead to any stronger or better worker protections. Those protections are likely to stay at about the level provided by the Consumer Credit Protection Act almost a half a century ago. So, the threats to workers are, at best, about the same as they have been for the past fifty years, and maybe a bit more daunting given the increased use of garnishment to collect debts of various kinds.”).

greengrocer was not paid, the greengrocer could go out of business.<sup>302</sup> Today, debt collection takes place on an entirely different scale.<sup>303</sup> National creditors extend credit expecting a certain amount of default, made profitable by a robust third-party debt-buying industry.<sup>304</sup> The consequence to individuals of wage garnishments that result from these business practices is personal and profound—the inability to meet basic needs, wrecked credit, and unemployment. If states are going to reform their garnishment laws—and many have—they should do so in a way that protects consumers and helps low-wage workers break the cycle of debt and poverty.

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302. Patterson, *supra* note 52, at 735 (“If the state had retained its rural character and the collection of debts had remained in the hands of the original creditor or his attorney these statutes would rarely work any injustice. In such a rural environment there is usually a personal relationship between creditor and debtor that enables the creditor to know firsthand whether his debtor is about to abscond or become insolvent. However, urbanization has become the dominant fact of life for most of us and the collection of debts has become the province of the professional bill collector on a mass collection basis. As a result, statutes designed for use in the extraordinary case are systematically applied to produce efficient collection results regardless of particular justification for their use in individual cases.”).

303. Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 LOY. CONSUMER L. REV. 179, 191 (2014) (asserting that debt buyers are “are even further removed from the personal relationships with consumers” than commercial lenders).

304. See Jiménez, *supra* note 243, at 43.

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